

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

76-4179

United States Court of Appeals

FOR THE SECOND CIRCUIT

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.,

Petitioner,

v.

FEDERAL TRADE COMMISSION,

Respondent.

ON PETITION FOR REVIEW OF ORDER OF THE FEDERAL TRADE COMMISSION

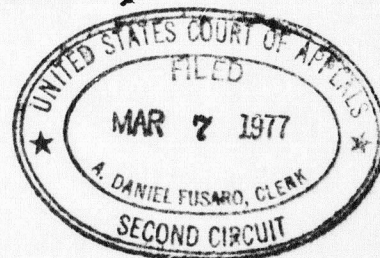
SUPPLEMENTAL JOINT APPENDIX

VOLUME XI

Pages 6384 to 6468

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REPLY BRIEFSUPPLEMENTAL JOINT APPENDIX

<u>Page</u>	<u>Line</u>	<u>Citation</u>	<u>Volume XI</u>
5	11-12	Tarr 1001-02	A6446-47
5n.5	8	Tarr 966-82	A6427-43
5n.5	12	Tarr 983-84	A6444-45
7	24-25	Minkler 382-83	A6399-400
9n.9	3	Minkler 373	A6398
9n.10	3	Schmidt 1826-27	A6415-16
9n.10	5-6	Minkler 339-40	A6396-97
16n.16	2	Szczepaniak 1308-09	A6417-18
17n.17	7	Cocley 5841-43	A6448-50
18	35	Gintert 2522-23	A6389-90
20	1	Minkler 387-93	A6401-07
20	19-20	Tarr 944-45	A6421-22
28n.27	1	CX 120	A6457

TABLE OF CONTENTS

VOLUME I

<u>Pleadings, Opinions, Orders and Submissions of the Parties</u>	<u>Page*</u>
1. Public Docket Sheets.....	1
2. Complaint.....	25
3. Answer of A&P.....	31
4. A&P's Application for Vacation or Modification of Subpoena Duces Tecum, November 15, 1971.....	37
5. Borden's Request for Admission, August 7, 1972.....	46
6. Complaint Counsel's Reply to Borden's Request for Admission, August 17, 1972.....	56
7. Complaint Counsel's Answer in Opposition to A&P's Motion to Dismiss the Complaint, October 20, 1972.....	66
8. Order of Administrative Law Judge, October 25, 1972 (re: A&P Motion to Dismiss Complaint).....	96
9. Order of Federal Trade Commission, January 19, 1973 (re: A&P Motion to Dismiss Complaint).....	101
10. Response of Borden to Request for Admissions, September 29, 1972.....	107
11. A&P's Amended Answer to Complaint Counsel's Request for Admissions, March 1, 1973.....	109
12. A&P's Further Amended Answer to Complaint Counsel's Request for Admissions, March 12, 1973.....	111
13. Borden's Additional Response to Request for Admissions, March 15, 1973.....	112
14. Order of Administrative Law Judge, September 16, 1974 (re: Cost Justification Exhibits).....	114

* Pages 634, 636, 848, 850, 2470, 3020 and 3094 have been intentionally left blank.

Page

15. Complaint Counsel's Proposed Findings of Fact, Vol. II, May 19, 1975 (re: A&P's Cost Studies).....	118
16. A&P's Proposed Findings of Fact, Vol. I, June 10, 1975 (Findings 203-14, 270-84, 388-402).....	445
17. A&P's Proposed Findings of Fact, Vol. II, June 10, 1975 (re: A&P's Cost Studies).....	478

VOLUME II

18. Complaint Counsel's Reply to Respondents' Proposed Findings of Fact, July 2, 1975.....	863
19. Initial Decision and Order of the Administrative Law Judge, September 24, 1975.....	914
20. Final Order and Opinion of the Federal Trade Commission, April 29, 1976.....	1017
21. A&P's Petition for Review, July 23, 1976.....	1070

Transcript of Proceedings*Witnesses for the Commission

1. Harry Archer (Borden).....	1071
2. Albert Banaski (Bowman Dairy).....	1092
3. Robert Barnes (Wallies Market).....	1094
4. Edward Barney (Model Food Center).....	1109
5. Ira Bartels (A&P).....	1142

* The handwritten changes appearing in the portions of the transcript contained in this Appendix reflect the corrections in the transcript approved by the Administrative Law Judge in his "Order Correcting Transcript", dated September 23, 1975.

	<u>Page</u>
6. R. John Bitting (FTC Accountant).....	1183
7. James Cox (Jim's Groceries).....	1344
8. Glenn W. Gintert (Wilco Food Center).....	1364
9. Orville Gose (Borden).....	1386
10. John Kalchbrenner (Bowman Dairy).....	1436
11. Richard L. Kristoff (Burger's Supermarket).....	1437
12. John M. Kuhlman (University of Missouri).....	1482
13. Christopher Lasorso (Mayfair Foods).....	1484
14. William R. Lemberg (FTC Accountant).....	1520
15. Roy Marquardt (Borden Distributor).....	1561
16. Manley Minard (Joseph Tittle & Sons).....	1578

VOLUME III

17. Ralph R. Minkler (Borden).....	1609
18. Paul Peters (Model Food Center).....	1803
19. Richard Rouse (Borden).....	1807
20. Walter Schaub (Scot Lad Foods).....	1836
21. Elmer Schmidt (A&P).....	1837
22. Rozella Seidl (Borden).....	1933
23. Herschel Smith (A&P).....	1937
24. Donald Soberg (Wisconsin Bureau of Dairy Trade Practices).....	2058
25. Henry Soldwedel (Sidney Wanzer & Sons Dairy).....	2062
26. Lyle Solverson (University of Southern Illinois).....	2073
27. John Szczepaniak (Borden).....	2108
28. Gordon Tarr (Borden).....	2123

	<u>Page</u>
29. Scott A. Walker (FTC Economist)	2196
30. John White (A&P)	2211

Witnesses for the Respondents

1. Robert Abrahms (Glen & Mohawk Milk Association)	2235
2. Edmund R. Bayma (A&P)	2265
3. Frank T. Cannon, Sr. (Bowman Dairy)	2280
4. William Corbus (A&P)	2391

VOLUME IV

5. Ronald Daube (Borden)	2400
6. Samuel E. Dean (Dean Foods)	2417
7. Eugene Dischner (Borden)	2424
8. D. McDonald Graham (University of Missouri)	2434
9. Robert G. Havemeyer (Case & Company, Inc.)	2485
10. Jesse W. Markham (Harvard School of Business Administration)	3091
11. LeGrove Miller (A&P)	3093
12. Joseph J. Pergler (Borden)	3095
13. Earl Pilgrim (A&P)	3125
14. Charles Tise (Borden)	3127

Miscellaneous

1. John J. Mathias (Complaint Counsel)	3173
2. Prehearing Conferences	3176
3. Colloquy	3178

INDEX TO EXHIBIT VOLUMES*VOLUME V

<u>Commission Exhibits</u>	<u>Page</u>
CX 4 Haskins & Sells Wisconsin cost study.....	3201
CX 5 Borden letter, Minkler to Archer, Nov. 20, 1964.....	3206
CX 7 Borden letter, Minkler to Archer, Dec. 28, 1964.....	3208
CX 9 Borden letter, Minkler to Archer, Jan. 22, 1965.....	3216
CX 12 Borden letter, Minkler to Pentz, Feb. 9, 1965.....	3217
CX 13 Handwritten Borden worksheets, Feb. 9, 1965.....	3219
CX 14 Borden private label quote to A&P, Feb. 9, 1965.....	3232
CX 16 Internal Borden notes, Feb. 9, 1965.....	3237
CX 17 Handwritten Borden worksheets, May 25, 1965.	3239
CX 18 Borden private label quote to A&P, May 25, 1965.....	3260
CX 19 Internal Borden memorandum, May 26, 1965....	3276
CX 20H Handwritten Borden worksheet, July 22, 1965..	3284
CX 21 Borden private label quote to A&P, July 26, 1965.....	3285
CX 23 Borden memorandum submitted to A&P, 1965....	3306
CX 24 Borden schedules submitted to A&P, Aug. 4, 1965.....	3315
CX 25A Borden table submitted to A&P, Aug. 3, 1965.	3323

* A large number of the exhibit pages received in evidence during the proceeding below are handwritten notes, memoranda and accounting worksheets and calculations. As a result, their legibility, both in their original form and even more so when reproduced for inclusion in this Appendix, is unavoidably impaired.

	<u>Page</u>
CX 25 Internal Borden memorandum, B-E Aug. 6, 1965.....	3324
CX 26 Borden table submitted to A&P, Aug. 9, 1965.....	3328
CX 27 Borden table submitted to A&P, Aug. 9, 1965.....	3329
CX 28 Borden table submitted to A&P, Aug. 9, 1965.....	3330
CX 30 A&P memorandum, Schmidt to Bartels, Aug. 2, 1965.....	3331
CX 31 A&P memorandum, Schmidt to Bartels, Aug. 6, 1965.....	3332
CX 34 Internal A&P memorandum, Aug. 11, 1965....	3334
CX 35 Internal Borden memorandum, Aug. 13, 1965.	3335
CX 36 Borden private label quote to A&P, Aug. 13, 1965.....	3337
CX 37 Borden calculation of private label savings to A&P, Aug. 13, 1965.....	3371
CX 42 Internal Borden memorandum, Aug. 16, 1965.	3377
CX 43 Internal Borden memorandum, Aug. 18, 1965.	3381
CX 45 Internal A&P memorandum, 1965.....	3384
CX 50 Bowman private label quote to A&P, Aug. 31, 1965.....	3385
CX 51 Dean private label quote to A&P, Aug. 27, 1965.....	3407
CX 53 Internal Borden notes, Sept. 1, 1965.....	3410
CX 54 Handwritten Borden worksheets, Sept. 2, 1965.....	3412
CX 55 Internal Borden memorandum, Sept. 3, 1965.	3414
CX 56 Borden private label quote to A&P, Sept. 14, 1965.....	3419

	<u>Page</u>
CX 58 Internal Borden memorandum, Sept. 17, 1965.....	3443
CX 62 Borden private label quote to A&P, Sept. 21, 1965.....	3445
CX 63 Internal Borden memorandum, Sept. 22, 1965.....	3473
CX 64 Borden letter, Minkler to Pentz, Sept. 23, 1965.....	3477
CX 65 A&P comparison of private label quotes, 1965.....	3479
CX 66 A&P memorandum, Schmidt to Bartels, Sept. 28, 1965.....	3481
CX 70 A&P memorandum, Carver to Schmidt, Oct. 14, 1965.....	3483
CX 71 Internal Borden memorandum, Oct. 14, 1965.....	3485
CX 72 Internal Borden memorandum, Oct. 15, 1965.....	3487
CX 75 Portion of Borden's final private label A-J quote to A&P.....	3489
CX 75 Borden letter, Minkler to Pentz, P-T Dec. 7, 1965.....	3499
CX 75U Internal Borden memorandum, Dec. 1965...	3504
CX 75 Internal Borden memorandum, 1965..... V-X	3505
CX 75 Borden letter, Minkler to Pentz, Z(1)- Jan. 3, 1966..... Z(3)	3508
CX 79 Internal Borden memorandum, May 25, 1966.....	3511
CX 80 Internal Borden memorandum, May 25, 1966.....	3512
CX 81 Internal Borden memorandum, May 27, 1966.....	3514
CX 87 Handwritten Borden Worksheets, June 19, 1966.....	3515

		<u>Page</u>
CX 90	Internal Borden memorandum, June 29, 1966.....	3518
CX 94	Dean private label quote to A&P, Jan. 24, 1967.....	3523
CX 95	A&P comparison of private label prices, 1967.....	3535
CX 96	Internal A&P notes, 1967.....	3536
CX 97	Dean private label quote to A&P, Feb. 27, 1967.....	3537
CX 98	Dean private label quote to A&P, Feb. 28, 1967.....	3546
CX 102	Borden letter, Gose to Schmidt, Mar. 13, 1967.....	3549
CX 103 D-F	Borden letter, Gose to Schmidt, Mar. 21, 1967.....	3552
CX 105	Borden letter, Gose to Schmidt, Mar. 30, 1967.....	3555
CX 110	Internal Borden memorandum, Apr. 4, 1967.....	3559
CX 119	Borden union contract.....	3563
CX 123	Borden discount schedule, Jan. 3, 1966 .	3571
CX 124	Borden price list, Feb. 7, 1966.....	3574
CX 125	Borden price list, May 26, 1966.....	3577
CX 137	Borden price list, Oct. 13, 1964.....	3579
CX 138	Borden discount schedule, Jan. 1, 1966 .	3580
CX 139	Borden price list, Feb. 2, 1966.....	3581
CX 153	Borden prices to A&P, 1965-67, Chicago-Calumet.....	3585
CX 154	Borden prices to A&P, 1965-67, West Central Indiana.....	3625

	<u>Page</u>
CX 155 Borden prices to A&P, 1965-66, Rock Island.....	3651
CX 180 FTC Doc. - A&P private label purchases, Aug. & Oct. 1966.....	3669
CX 182 FTC Doc. - Comparison of sales of A&P and Borden customers in Indiana, Oct. 1966 - Mar. 1967, June 1969 - Mar. 1970.	3671
CX 183 FTC Doc. - Sales and discounts to Borden customers in Illinois, Feb. & Mar. 1966.	3673
CX 185 FTC Doc. - A&P purchases of private label items in private label and Borden label, Nov. 1965 - Dec. 1968.....	3677
CX 187 FTC Doc. - Alleged discount and discrim- ination, Borden's Indiana customers.....	3678
CX 188 FTC Doc. - Burger's Supermarket, alleged discrimination.....	3679
CX 191 FTC Doc. - Model Food Center, alleged discrimination.....	3718
CX 194 FTC Doc. - Joseph Tittle & Sons (Highland), alleged discrimination.....	3757
CX 195 FTC Doc. - Joseph Tittle & Sons (Hohman Ave.), alleged discrimination...	3796
CX 196 FTC Doc. - Joseph Tittle & Sons (Lake St.), alleged discrimination.....	3812

VOLUME VI

CX 197 FTC Doc. - Joseph Tittle & Sons (Village Court) alleged discrimination..	3851
CX 198 FTC Doc. - Joseph Tittle & Sons (Valparaiso), alleged discrimination....	3890
CX 200 FTC Doc. - Wallies Market, alleged discrimination.....	3929
CX 202 FTC Doc. - Wilco Food Center, alleged discrimination.....	3959
CX 206 Borden profit and loss statement, Jan. 1965 - Aug. 1966.....	3998

	<u>Page</u>
CX 211D	Page from Borden's 1964 Annual Report...4002
CX 216	Pages from A&P's 1964 Annual Report.....4003
CX 217	Pages from A&P's 1965 Annual Report.....4006
CX 218	Pages from A&P's June 1966 prospectus...4009
CX 219	Pages from A&P's 1966 Annual Report.....4012
CX 221	Page from A&P's 1968 Annual Report.....4014
CX 252	FTC Doc. - A&P's margin on half-gallon milk.....4015
CX 255	FTC Doc. - A&P's wholesale cost and retail prices for selected milk products, 1965-1968.....4019
CX 256	A&P retail price book pages.....4021
CX 258	A&P organization chart.....4075
CX 260	Excerpts from Minkler deposition, Dec. 1971.....4076
CX 262	Malone deposition, Feb. 9-10, 1972.....4086
CX 263	A&P letter, Bartels to Smith, Oct. 1, 1965.....4295
CX 264	FTC investigational subpoena to Borden.....4335
CX 265	Borden rebate memoranda, Indiana customers, Oct. - Dec. 1966.....4343
CX 288	Borden rebate worksheets, Indiana customers, 1966, 1969.....4364
CX 289	Borden special sales expense requests, Jan. - Mar. 1970.....4388
CX 290	Borden interest refunds to Wilco.....4391
CX 293	U.S. Dept. of Agriculture publication...4392
CX 298	Borden union agreement, Indiana, 1963-1965.....4395

	<u>Page</u>
CX 299 Borden union agreement, Indiana, 1965-1967.....	4412
CX 300 Borden union agreement, Indiana, 1967-1970.....	4433
CX 302 A&P internal memorandum, Nov. 15, 1971...	4451

Respondent A&P Exhibits

RA&PX 2 Borden letter, Tarr to Schmidt, Oct. 1, 1965.....	4460
RA&PX 3 Borden letter, Minkler to Pentz, Oct. 1, 1965.....	4461
RA&PX 7 Excerpts from Tarr deposition, Dec. 1971.....	4462
RA&PX 9 Wisconsin Dept. of Agriculture publication.....	4472
RA&PX 16 Borden letter to A&P, Aug. 3, 1967.....	4483
RA&PX 17 Borden letter to A&P, Aug. 8, 1967.....	4484
RA&PX 18 Borden letter to A&P, Sept. 2, 1967.....	4485
RA&PX 29 Rebates and interest subsidies received by Tittle from Borden.....	4487
RA&PX 32 Weekly billing, fluid milk purchases, Feb. 2, 1966, Chicago and suburbs.....	4491
RA&PX 35 Stipulation - Services received by Borden's non-A&P Illinois customers....	4492
RA&PX 36 Stipulation - Services received by Borden's non-A&P Indiana customers.....	4496
RA&PX 38 Respondents' retail store subpoena.....	4501
RA&PX 39 Respondents' dairy subpoena.....	4508

VOLUME VII

RA&PX 40 Borden memorandum re: Woodstock plant..	4523
RA&PX 41 Borden Doc. - plant processing costs, 1965.....	4568

	<u>Page</u>
RA&PX 42 Borden private label quote to A&P, Apr. 20, 1971.....	4569
RA&PX 43 Dean private label quote to A&P, Oct. 19, 1971.....	4583
RA&PX 44 Spinney Run private label quote to A&P, Sept. 16, 1971.....	4589
RA&PX 45 Borden letter Wagner, to Bayma, June 23, 1971.....	4593
RA&PX 46 Borden letter, Wagner to Bayma, Nov. 11, 1971.....	4594
RA&PX 47 A&P Doc. - Gross Profits, Expenses and Net Profits as a Percentage of Sales, 1965-66.....	4595
RA&PX 50 Bowman private label proposal to A&P, Aug. 31, 1965.....	4596
RA&PX 51 Final Judgment, <u>United States v. Bowman</u> , Apr. 24, 1963.....	4619
RA&PX 53 Stipulation - Illinois statutes re: milk processing.....	4626
RA&PX 55 Stipulation - Chicago Board of Health regulations re: milk processing.....	4680
RA&PX 58 Stipulation - Expected testimony, Ray Tittle, Jr.....	4695
RA&PX 59 Stipulation - Letters between Borden and A&P's Indianapolis Division buyer...	4700
RA&PX 62 Glen & Mohawk private label proposal to A&P, May 1964 (Albany, N.Y.).....	4710
RA&PX 63 Glen & Mohawk private label proposal to A&P, May 1964 (Westchester County, N.Y.).....	4711
RA&PX 64 Glen & Mohawk private label proposal to A&P, Apr. 1965 (Boston).....	4712

	<u>Page</u>
RA&PX 65 Borden Doc. - rented dairy production expense, May 1965.....	4713
RA&PX 66 Borden Doc. - A&P private label pricing procedure.....	4715
RA&PX 67 Borden Doc. - accounts & subaccounts, Mar. 1966.....	4750
RA&PX 68 Borden Doc. - location numbers of accounts, May 1965, Mar. 1966.....	4801
RA&PX 69 Borden Doc. - summary of operation by business type, 5th period 1965.....	4802
RA&PX 70 Borden Doc. - sales & expenses by business type, 5th period 1965.....	4803
RA&PX 71 Borden Doc. - expense ledgers, May 1965.	4805
RA&PX 72 Borden Doc. - final expense summaries, Mar. 1966.....	5023
RA&PX 74 Borden Doc. - O'Hare Branch customers, average daily points, Mar. 1965, May 1965.....	5087
RA&PX 75 Borden Doc. - fluid milk sales, May 1965, Mar. 1965, Oct. 1969.....	5088
RA&PX 76 Borden Doc. - wholesale points, Mar. 1965, May 1965, Nov. 1965, Mar. 1966.....	5091
RA&PX 78 Borden Doc. - data re: containers/case, July 1971.....	5095
RA&PX 80 Borden Doc. - operating statement, Hammond Branch, Oct. 1969 (regular)....	5906
RA&PX 81 Borden Doc. - operating statement, Hammond Branch, Oct. 1969 (distributor)	5097
RA&PX 82 Borden Doc. - operating statement, Hammond Branch, Oct. 1969 (trailer runs).	5098
RA&PX 83 Borden Doc. - operating statement, Hammond Branch, Oct. 1969 (total milk)..	5099

			<u>Page</u>
RA&PX	85	Borden Doc. - expense summary, Hammond Branch, Oct. 1969 (selling, milk wholesale).....	5100
RA&PX	87	Borden Doc. - expense summary, Hammond Branch, Oct. 1969 (delivery, dairy broker).....	5101
RA&PX	90	Borden Doc. - advertising expenditures, Oct. 1969.....	5102
RA&PX	92	Borden worksheets - drivers commissions, Hammond Branch, Oct. 1969.....	5103
RA&PX	100	A&P Doc. - Comparison of Borden and Bowman quotations.....	5105
RA&PX	101	A&P Doc. - Geographic comparison of Borden and Bowman quotations.....	5106
RA&PX	102	A&P Doc. - Indiana A&P stores in Borden and Bowman quotations.....	5109
RA&PX	103	A&P Doc. - Raw milk price increase adjustment.....	5130
RA&PX	104	A&P Doc. - Bowman prices in Indiana.....	5134
RA&PX	105	A&P Doc. - Borden prices for items offered by Bowman.....	5138
RA&PX	108	A&P Doc. - list price values of A&P milk line.....	5143
RA&PX	129	American Dairy Review article re: Woodstock dairy plant, July 1965.....	5157
RA&PX	130	Food Engineering article re Woodstock dairy plant, Sept. 1965.....	5163
RA&PX	131	Borden publication re Woodstock dairy plant.....	5166

PageVOLUME VIII

RA&PX 133*	Borden's processing formulas, June 1966.....	5174
RA&PX 134*	Borden's processing formulas, Nov. - Dec. 1968.....	5177
RA&PX 135	Letters verifying respondents' store subpoena returns.....	5179
RA&PX 136	Letters verifying respondents' dairy subpoena returns.....	5302
RA&PX 137	Comparison of A&P private label prices and the 2-2-2 formula.....	5412
RA&PX 170	A&P Doc. - Cost analysis, Mayfair Foods (O'Hare Branch).....	5414
RA&PX 173	A&P Doc. - Cost analysis, James Cox (O'Hare Branch).....	5420
RA&PX 187	A&P Doc. - Borden's cost to serve A&P's Valparaiso, Ind. store.....	5560
RA&PX 221	A&P Doc. - Net balance due, Borden's Hammond customers.....	5563
RA&PX 232	A&P Doc. - Profit & loss evaluation of Borden private label proposal of Sept. 21, 1965.....	5565

VOLUME IX

RA&PX 233	A&P Doc. - Cost analysis, O'Hare Branch (Illinois), Mar. 1966.....	5682
RA&PX 234	A&P Doc. - Cost analysis, Hammond Branch (Indiana), Oct. 1969.....	5758
RA&PX 236*	Sandusky Affidavit re: Borden's processing formulas.....	5874

* Portions of RA&PX 133, 134 and 236 are in camera until Aug. 23, 1977 (unless extended by order of the Commission) pursuant to an Order of the Administrative Law Judge, dated Aug. 29, 1974. (See Volume X (In Camera Exhibits), pp. 6379-6383)

	<u>Page</u>
RA&PX 239 Stipulation - store subpoena returns.....	5881
RA&PX 240 Stipulation - dairy subpoena returns.....	5892
RA&PX 241 Stipulation - Jewel subpoena return.....	5894
RA&PX 245 Case & Co. studies: North Carolina, South Carolina & Virginia.....	5898
RA&PX 246 A&P Doc. - Revised comparison of Borden and Bowman proposals.....	6000
RA&PX 248 A&P Doc. - Borden's price to A&P on certain promotional items.....	6002
RA&PX 250 Dean - A&P correspondence re: 1971 milk solicitations.....	6004
RA&PX 251 Borden - A&P correspondence re: 1971 milk solicitations.....	6018
RA&PX 252 Spinney Run - A&P correspondence re: 1971 milk solicitations.....	6027
RA&PX 253 A&P letter re private label milk solicitation, 1971.....	6031

Respondent Borden Exhibits

RBX 1	Borden proposal to Kroger, July 29, 1968.....	6032
RBX 5	Borden proposal to Eagle, Sept. 12, 1968.....	6042
RBX 22	Borden proposal to National Tea, Nov. 1968.....	6065
RBX 23	Borden prices to K-Mart stores, Hammond, Ind., Nov. 1967.....	6086
RBX 24	Respondents' Feb. 1973 subpoena to Jewel.....	6088

VOLUME X

In Camera Exhibits

CX 184	Tax returns & FTC summary, Mayfair Foods, Jim's Grocery.....	6094
--------	-----------------------------------------------------------------	------

Page

CX 189	Tax returns, financial statements & FTC summary, Burger's Supermarket..	6118
CX 192	Tax returns & FTC summary, Model Food Center.....	6263
CX 199	Financial statements & FTC summary, Joseph Tittle & Sons.....	6287
CX 201	Financial statements & FTC summary, Wallies Market.....	6305
CX 203	Tax returns & FTC summary, Wilco Food Center.....	6310
RA&PX 133	Borden's processing formulas, June, 1966.....	6379
RA&PX 134	Borden's processing formulas, Nov. - Dec. 1968.....	6380
RA&PX 236	Sandusky Affidavit re: Borden's processing formulas.....	6382

TABLE OF CONTENTS

SUPPLEMENTAL JOINT APPENDIX

VOLUME XI

Pleadings, Opinions, Orders
and Submissions of the Parties Page

Complaint Counsel's Reply to Respondents'
Proposed Findings of Fact, July 2, 1975.....6384

Transcript of Proceedings

Witnesses for the Commission

1.	Harry Archer (Borden).....	6387
2.	Glenn W. Gintert (Wilco Food Center).....	6389
3.	Orville Gose (Borden).....	6391
4.	William R. Lemberg (FTC Accountant).....	6395
5.	Ralph R. Minkler (Borden).....	6396
6.	Elmer Schmidt (A&P).....	6408
7.	John Szczepaniak (Borden).....	6417
8.	Gordon Tarr (Borden).....	6419

Witnesses for the Respondents

1.	Orley V. Cooley (A&P).....	6448
2.	Robert G. Havemeyer (Case & Company, Inc.).....	6451

Commission Exhibits

CX 57	Borden letter, Minkler to Pentz, Sept. 16, 1965....	6453
CX 106	Internal Borden memorandum, Mar. 31, 1967.....	6454
CX 120	Borden discount schedule, Nov. 18, 1963.....	6457
CX 262	Malone deposition, Feb. 9-10, 1972.....	6458

Respondent A&P Exhibits

RA&PX 170	A&P Doc. - Cost analysis, Mayfair Foods (O'Hare Branch).....	6461
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Complaint Counsel's Reply to Respondents' Proposed Findings of Fact

Also as discussed in Findings CF-82(d)-(e), the undisputed evidence shows that as a result of the private label contract, Borden immediately removed the statement "These prices are available to all on a proportionately equal basis" from its private label price change tables. Since this statement was placed on these sheets for A&P's benefit, and pursuant to A&P's policy of requiring such statements, and since Borden and A&P discussed such tables on a regular basis, this is very strong additional evidence that A&P knew--and certainly should have known--that Borden's new private label prices were not available to others (See CF 86(a), (c); CF 85(e)(3)). */

3. A&P's Arguments About The Borden
Cost Information Showing Its Prices
Were Below Cost

CF-84 points out that A&P was also on notice that Borden's prices could not be cost justified inasmuch as Borden had provided A&P with a substantial amount of cost information during the negotiations -- all of which demonstrated that Borden's final prices had to be below its costs.

*/ A&P does argue that this interpretation of the evidence distorts the record. (RAPF, pp. 296-297, n.). Complaint counsel refer Your Honor to Mr. Tarr's statements that he removed the statement from A&P's price sheets upon the instructions of his superiors at the start of the private label contract (Tarr, Tr. 930-932; compare CX 154I, J; Gose Tr. 1076). In the Spring of 1966, Borden removed the statement from its Borden label price sheets (CX 153, 154, 155). The fact that this statement appeared occasionally on Borden label price sheets after the spring of 1966 is irrelevant.

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Complaint Counsel's Reply to Respondents' Proposed Findings of Fact

A&P attacks this finding on the grounds that careful analysis of this information allegedly indicates that the cost information did not take into account all of the potential savings to Borden and that it was not reliable. (RAPF, p. 294). While these assertions are unfounded, */ the more

*/ A careful reading of A&P's findings reveals the baseless nature of its arguments (see RAPF 203-214). RAPF 207-208, for example, accuse Borden of "legerdemain" in CX 23-24 for reallocating Borden's cost of hauling milk to Chicago to the raw milk cost to conform the Chicago situation to that in New York, where Borden's plant was in the city. CX 23-24 is a comparison, and Borden's adjustment is obviously legitimate to conform the situations. This is especially true since Borden noted the adjustment, and offered to explain it to A&P. A&P refused to listen (CX 31). A&P also argues in RAPF 209 that Borden's use of its New York production figure for Chicago was incorrect; the evidence shows that this figure was substantially lower than Borden's actual cost and was used only to avoid argument (CX 5). RAPF 210 is a speculation that because different figures, on different sheets, prepared for different reasons, do or do not correspond, Borden's documents are unreliable. Since these figures are not comparable, A&P's argument is meaningless. RAPF 211 argues that the delivery costs set out in these documents do not relate to A&P. Review of CX 24B and CX 23-25 in general shows specifically that these calculations were made in connection with the A&P business. Finally, A&P's objection to Mr. Malone's calculations on the ground that they are estimates based upon his experience, and not a formal cost study, misses the point. CX 23-24, for example, is a careful study which shows that Borden's direct costs were higher than its final prices, and is thus notice that Borden's prices were not based on its costs. In this regard, A&P's citation to Mr. Malone's deposition is incorrect. The testimony cited states only that Mr. Malone did not make a formal time and motion study of the A&P business.

In sum, we come back to the main point: CX 24D shows that Borden's costs, not including overhead or burden, were higher than Borden's final price to A&P (CX 62). And this information, together with all of the other cost information which Borden provided to A&P, demonstrates without a doubt that A&P knew or should have known that Borden's final prices were not cost justified (See CF 84, 82-87).

Complaint Counsel's Reply to Respondents' Proposed Findings of Fact

important point is that they are irrelevant. Even if all of these contentions were true (and they are not), the simple fact remains that all of the Borden cost studies and cost information supplied to A&P demonstrated that Borden's cost (and in some cases its direct costs) were higher than its ultimate prices to A&P. Again, this is clear notice to A&P that Borden's prices were not cost justified, and were thus illegal. This is certainly true in this case, where A&P's principal negotiator, Elmer Schmidt, specifically stated that he believed all of the Borden negotiators to be honest and forthright in their dealings with him (Schmidt, Tr. 1843) */ In any event, such continuing and specific notice certainly raised the duty to inquire. Fred Meyer, Inc. v. F.T.C., ^{supra} 351, 365-367 (9th Cir. 1966), aff'd on other grounds, 390 U.S. 341 (1968). A&P made no such inquiry. (CF 85(c), 90).

4. A&P's Arguments About Borden's "Legal Letter"

CF-85 points out that A&P was also on notice that Borden's costs were not cost justified or available to others, (1) in that Borden failed to respond to A&P's request for a letter of availability, and, (2) in that A&P knew that the "legal letter" which Borden did submit was not a letter of availability. Despite these facts, A&P made no effort to determine if Borden's prices were to be made available to others.

*/ In view of this fact, A&P's further implication that Mr. Schmidt did distrust Borden is false (See RAPF, p. 294).

Testimony of Harry L. Archer

1 with that document, sir, if you will.

2 Mr. Archer, can you identify the handwritten notations on
3 the right top of Commission Exhibit 57?

4 A Yes. Those are Mr. Pentz' notations.

5 Q Thank you.

6 And does this document refresh your recollection in any
7 way as to what may have occurred in the month of September,
8 1965 with regard to the private label negotiations?

9 A No, it doesn't.

10 Q Mr. Archer, I hand you Commission Exhibit which has been
11 received in evidence ⁶⁴~~55~~A and B, and again ask you to familiarize
12 yourself with that document, please. And I also hand you a
13 copy of Commission Exhibit 62A with subparts which has been
14 received in evidence, and ask you to quickly familiarize
15 yourself with that.

16 Mr. Archer, can you identify the handwritten notations at
17 the right hand top of the page on Commission Exhibit 64A?

18 A Yes. Those are again Mr. Pentz.

19 Q And does either the letter, Commission Exhibit 64A, B,
20 or Commission Exhibit 62 with subparts refresh your recollection
21 as to what might have happened in the month of September, 1965?

22 A No, I don't recall these.

23 Q Do you remember independently, sir, without looking at
24 these documents whether or not there was a final resolution
25 of the private label negotiations and what it was?

A Well I know there must have been a final resolution of it, but I don't know what it was, and as I think I have indicated earlier, all of these negotiations were carried on at the local level, and it so indicated in the various things that you have handed me here this afternoon.

Q Do you remember any meeting with Herschel Smith in, let's say, the months of June through September regarding the private label negotiations in Chicago?

A No, I don't.

Q Mr. Archer, I hand you a copy of Commission Exhibit CX 75P through 75T, which has been received into evidence, and ask you to briefly familiarize yourself with that document, sir.

Mr. Archer, can you identify the handwriting at the upper right hand corner of Commission Exhibit 75P?

A That is Mr. Pentz' writing along with my own.

Q Which is your own, sir?

A The "No copy for me".

Q The statement "No copy for me"?

A That is right.

Q Do you recall the circumstances surrounding Mr. Pentz sending this to you and what might have been happening during the month of December, 1965?

A Well in a vague sort of way, and a rather poor one. Of course, it was his responsibility to keep me informed as to the volume of sales as well as the effect it would have, either

1 there was a change and your store personnel started making
2 up the order, and you believe the rebate was increased
3 at this point.

4 At about that same time, was there any other
5 changes in the method of delivery to you by Borden of
6 their milk and dairy products? Did anything else change
7 at that time?

8 A I think about that time is when they didn't want
9 to guarantee the -- the only thing they guaranteed would
10 be the damaged stuff that, or spoiled stuff that was --
11 if they brought it in out of date. If it was our
12 negligence, why, we had to suffer the loss.

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1 Q Right. You are saying that this was a change.

2 What was the change from? In other words,
3 what was the practice prior to this change, prior to
4 this change did Borden guarantee --

5 A Guaranteed everything.

6 Q In other words, prior to this change Borden took
7 the risk of all non-salable merchandise?

8 A Yes.

9 Q After this change occurred, Borden would only be
10 responsible for damaged packages?

11 A Yes, sir, or outdated stuff that they brought in.

12 Q Stuff that they brought in that was already out of
13 date?

14 A Yes.

Q And if I may, at about this same time -- and you
15 testified there was a change as to ordering, and a change
16 as to what products would be returned to Borden; was there
17 also a change as to special deliveries?

18 A Yes, sir.

19 Q Can you establish at all when this change took place--

20 A No, I can't.

21 Q -- during this period?

22 A (Shaking head.)

23 Q Do you have any idea of the year it occurred?

24 A I would say it was about '66, '67, in there, but
25

Testimony of Orville P. Gose

foundation has been laid. ***

JUDGE HINKES: Well, this witness is being asked for his understanding, which may not be at all similar to the terms of the contract, and to that extent it is permissible, although what its probative value would be, I don't know.

You may answer the question.

THE WITNESS: My recollection of the terms were that there would be advance ordering, frequency of deliveries, varied with the various areas involved, there would be no credit for returns, unless it was due to faulty manufacturing by the Borden company, there was advance orders, such things as no stamping of the milk and so forth. That is my recollection.

By Mr. Curnin:

Q And that this represented a change in the manner and method in which Borden had been delivering Borden label milk to A&P stores.

A Yes, I think it definitely changed a number of the conditions of delivery.

Q And was one of the conditions, Mr. Gose, that the milk was to be delivered to a ^{cooler} dealer but was not to be placed in the dairy case?

A That is my recollection.

Q Now, was it necessary for the Borden Company to instruct its personnel on this new manner and method of delivery?

A As my memory serves me, that was covered with our various

Testimony of Orville P. Gose

1 branch operating people and in turn it was their responsibility
2 to cover it with the delivery people involved at the respective
3 branches.

4 Q Were specific instructions issued by Borden to its branch
5 people as to the instructions that were to be given to its
6 drivers?

7 A Yes. As I recall -- I can't remember dates, obviously --
8 but as I recall, we at our office had meetings with each branch
9 operating manager and I am sure some of his personnel.

10 Q For the purpose of instructing him on the new terms and
11 methods of delivery.

12 A The conditions and terms of the new program.

13 Q To your knowledge, did Borden ever permit or encourage
14 its drivers or distributors to vary from these terms and condi-
15 tions of delivery?

16 A Absolutely not.

17 Q Now, were you ever advised of an instance or an occasion
18 when a Borden driver was doing more for a particular A&P store or
19 or its manager in regard to the delivery of private label milk?

20 A Yes, I remember one occasion where this information
21 reached my desk. I recall seeing Mr. Elmer Schmidt with regard
22 to it, and I recall that it was with regard to one of our
23 deliverymen that was doing the ordering rather than the store
24 personnel, and I recall Mr. Schmidt picking up the phone almost
25 immediately, discussing the matter at the store level with

Testimony of Orville P. Gose

1 whoever was involved, and if my memory _____ me, the problem
2 was corrected almost immediately. That, for some reason, is
3 quite vivid in my memory.

4 Q When did this occur, sir, as best you can recall?

5 A I have no idea as to when that was.

6 Q During the period 1966 through the end of 1968 when you
7 left, was this the only occurrence that you can recall?

8 A It is the only one that I can recall, that I can think of.

9 Q And were you the Borden employee who was responsible for
10 the supervising of the manner and method of delivery and if there
11 had been any complaints along these lines, you were the man who
12 would have been apprized of it?

13 A Yes, I should have been apprized of it because I was the
14 one, either myself or possibly Gordon Tarr, that would have dis-
15 cussed such a matter with Mr. Elmer Schmidt.

16 Q If a Borden driver or distributor deviated from the instruc-
17 tions, he had received from the Borden Company as to the manner
18 and method of delivery, he would have been doing so then, in
19 your opinion, in direct contravention of instructions he had
20 received from the Borden company?

21 A Yes.

22 Q Did you consider Elmer Schmidt a knowledgeable milk buyer?

23 A I would have considered him a capable buyer, if this is
24 answering your question. I wouldn't consider Mr. Schmidt as
25 being overly knowledgeable with regard to the milk industry, the

dairy industry.

Q Well, when you first came in contact with Mr. Schmidt, and I believe you testified this was sometime after November 1, 1965, at which time you started as the contact man, so to speak, between Borden and A&P, at that period of time, the latter part of 1965, did you conclude that Mr. Schmidt had a great lack of knowledge about the dairy industry.

A I don't know that I concluded that. I think it was awareness or a feeling on my part.

Q And did others at the Borden Company have the same feeling at this time, November of 1965?

Q MR. MATHIAS: Your Honor, I object to the form of the question.

MR. CURNIN: I withdraw the question.

By Mr. Curnin:

Q Did you have discussions with others at the Borden company in November of 1965 at which you discussed Mr. Elmer Schmidt and his knowledge of the dairy industry?

A I did not, to my knowledge.

Q Did Mr. Schmidt in November of 1965, based upon conversations that you had with him, understand such things as the Federal Milk Marketing Order?

A Your date, I could not answer. I do remember an occasion when the gentleman that was in charge of our production and responsible for the Woodstock plant made a call with me to see

1 same result. [***

2 JUDGE HINKES: But what is the controlling
3 criterion? Is it time or is it volume? Or is there no
4 controlling criterion?

5 THE WITNESS: I don't think there is really a
6 controlling principle. I think we go back to a basic principle
7 that the cost should be allocated in the manner in which it
8 occurs and as Mr. Falls quoted from the Wixon book, relation
9 to the benefit or the responsibility involved.

10 If the customer benefits then he should be allocated
11 a cost or if he is responsible for incurring the cost then
12 he should also be charged with incurring the cost and the
13 problem of course is to measure this function as to how much
14 he should be charged with.

15 JUDGE HINKES: Well, in connection with the routemen's
16 commissions you said, if I understood your testimony, that
17 allocation based according to time spent was not correct. It
18 should have been based on the volume delivered.

19 THE WITNESS: Yes.

20 JUDGE HINKES: What was your opinion with respect
21 to branch sales expense, men like Mr. Tar, Mr. Goss. There
22 the allocation was done according to the volume sold and
23 if I understood you you said that was wrong. What was your
24 opinion there?

25 THE WITNESS: No, I don't think I said that with

Testimony of Ralph R. Minkler

[***]

1 interruption came along. Let me go back.

2 What would a difference of between seven and eight cents
3 per hundredweight convert into on the basis of mills per half
4 gallon according to that table which is 6-C, or 62-N?

5 A Per half gallon?

6 Q Yes, sir.

7 A Seven cents is indicated as decimal point 003.

8 Q And .8 cents?

9 A Decimal point 0034.

10 Q So somewhere between three mills and 3.4 mills per half
11 gallon, is that correct?

12 A That is right.

13 Q Now, if A&P had asked Borden for 3.5 percent butterfat
14 content milk, what would the additional cost to the A&P have
15 been?

16 A The additional cost ---

17 Q Per half gallon.

18 A To A&P, per hundred pounds, would have been decimal point
19 0740.

20 Q And per half gallon, sir?

21 A (No response.)

22 Q Just give us the range.

23 A First we have a computation here on 6-B, of the change
24 in cost when you move from a 3.5 to a 4.4 percent butterfat, and
25 it is seven cents, four mills, per hundredweight now, divide

1 that by ---

2 Q Mr. Minkler, I think we can shorten it if you refer to the
3 table on 6-C.

4 A All right. Again are we on half gallons?

5 Q Yes, sir. It doesn't have to be precise. Is it between
6 three mills and 3.4 mills per half gallon?

7 A Yes.

8 Q Somewhere between those two figures?

9 A Yes.

10 Q That there would have been, that would have been an
11 increase in price if the butterfat content being supplied by
12 Borden to A&P had been 3.5 instead of 3.4, is that correct?

13 A Yes.

14 Q Thank you. Now, Mr. Mathias showed you a document that
15 has been marked 16-B, and while they are getting that out, let
16 me ask you is it true that A&P requested Borden to give it a
17 private label quotation to be built up from the costs of raw
18 milk, adding on costs for containers, processing, and delivery
19 separately, as well as a profit, instead of merely giving an
20 arbitrary differential from the price of Borden brand milk?

21 A No, I never said that it was, that they asked for it.
22 If that is what I -- I guess I don't understand your question.

23 Q Well, do you recall that A&P asked Borden to give it a
24 private label quotation which would commence with the price of
25 raw milk and add on to it separately the costs of containers,

1 said when you expected the consolidation of the Chicago and
2 Columbus Divisions of Borden to result in a savings of a mil-
3 lion dollars, was that a million dollars annually?

4 A Yes.

5 I also would like to add that that was just a wild
6 guess on my part. This was before any study had been made.

7 Q Now, Mr. Minkler, did you ever tell Elmer Schmidt or
8 anyone from A&P that Borden's \$820,000 quotation, just so we
9 understand each other without reference to exhibit numbers,
10 to A&P, was based on what you have called "any how: account-
11 ing?"

12 A No; I never told them that.

13 MR. MATHIAS: Your Honor, this is an area where
14 the witness has testified already that he had no present
15 knowledge and we have placed certain pages of a former deposi-
16 tion transcript in evidence.

17 I believe that it is improper to examine him on
18 this point in this manner.

19 MR. MCINERNEY: I think it is entirely proper, Your
20 Honor, and I would like to inquire further on the same sub-
21 ject, by use and reference to precisely what Mr. Mathias is
22 talking about.

23 JUDGE HINKES: You may continue.

24 By Mr. McInerney:

25 Q I would like to show you page 206 of your deposition,

1 And then subsequently when we did finish this spreading
2 of the 820,000 to the various items out at the VFW, when I
3 said, "You know that we can only give you this price because
4 we feel that we are meeting a competitive bid"; and I said,
5 "This is tremendously important, Elmer. You have got to pre-
6 serve the quotations that you have, whatever they are. You
7 have got to be sure your superiors understand this, and your
8 lawyers understand it. If we are ever asked, we are going to
9 say that we made this bid, this price, based on a belief that
10 we were meeting competition."

11 And he said, "I read you loud and clear. I understand
12 what you are saying."

13 Q Well, I think you have said that already, Mr. Minkler.

14 A Well.

15 Q My question is whether you gave any ^{consideration to} assurances with
16 respect to whether you were meeting or beating a competitive
17 offer, anything in addition to what you have already testi-
18 fied to.

19 A Well, we certainly sweat over it and talked about it in
20 our shop, but no one knew how we could do it. There isn't any
21 way that you can go to such a customer, or at least we didn't
22 feel we could, and just blatantly say, "Look, show us; if you
23 have got it, say, we will talk", but that wouldn't have served
24 any purpose except to kick us out.

25 Q Well, did you consider, for example, writing to A&P along

1 the lines you have just testified to?

2 A No; no; no.

3 Q Did you consider asking them for a letter?

4 A No.

5 Q Confirming that conversation?

6 A No; no.

7 Q One of the documents that Commission counsel have marked
8 for identification is a handwritten document, CX-55-G, that
9 refers to a conversation with a Mr. Greaves and states, in
10 part, "Don't worry about legal aspects until after we hold
11 the business."

12 JUDGE HINKES: You are referring to what document
13 again, Mr. McInerney?

14 MR. MCINERNEY: 55-G.

15 JUDGE HINKES: G?

16 MR. MCINERNEY: G; yes, sir.

17 By Mr. McInerney:

18 Q Now, does that help to refresh your recollection at all
19 as to whether any consideration was given to what might be done
20 to assure you that Borden was meeting a competitive situation?

21 A No; it doesn't, Mr. McInerney.

22 MR. WHITE: Your Honor, I move to strike the ques-
23 tion insofar as it brings into the record information from a
24 document that is not in evidence.

25 MR. MCINERNEY: The document that the Commission

[...]

Commission Exhibit 68-A for identification, and ask you what that is, sir.

A It is a letter from Gordon Tarr to Elmer Schmidt of the A&P Tea Company.

Q Do you recognize the signature?

A Yes; I do.

MR. MCINERNEY: I offer that in evidence.

MR. MATHIAS: As whose exhibit, Your Honor?

JUDGE HINKES: As presumably Respondent A&P Exhibit Number 2.

It has been marked for identification as a Commission Exhibit, but, of course, it isn't being offered by the Commission.

It will therefore have to be re-marked as Respondent's Exhibit A&P-2, identified as a letter from Mr. Tarr to Mr. Schmidt, and dated October 1, 1965.

(The document referred to, previously marked as a Commission exhibit, was re-marked as Respondent's Exhibit A&P-2 for identification.)

MR. MATHIAS: Your Honor, I do have an objection.

This witness has not been able to identify the exhibit. I do not believe there has been any ground work laid for its introduction into evidence.

MR. MCINERNEY: Your Honor, I think he has identified it. Mr. Mathias, himself, had it marked for identification,

1 and I see no basis at all for the objection.

2 MR. MATHIAS: Your Honor, marking is a far cry
3 from introducing it.

4 JUDGE HINKES: Well, the difficulty is this is a
5 letter which has been identified as containing the signature of
6 the sender, Mr. Tarr, but whether it was ever sent, let alone
7 received by the addressed, we don't know, and its probative
8 value would be nil if it was never sent.

9 MR. McINERNEY: I would like Mr. Mathias to tell
10 Your Honor whether he was questioning whether this was ever
11 sent.

12 MR. MATHIAS: Your Honor, it is not up to me to
13 know whether it was ever sent. If Mr. McInerney is asking me
14 to stipulate it into the record at this time, that is a
15 different question.

16 MR. McINERNEY: Well, what about that?

17 MR. MATHIAS: And I refuse.

18 But the question is whether or not it has been
19 properly identified.

20 MR. McINERNEY: I think, Your Honor, we are taking
21 a lot of time on --

22 JUDGE HINKES: Well, in any event, I have to
23 sustain the objection unless counsel are willing to stipulate
24 its admission. Obviously, this document has not been identi-
25 fied as a document of any probative value inasmuch as it might

1 have been simply retained by Mr. Tarr and had never seen the
2 light of day.

3 MR. McINERNEY: I must except to Your Honor's
4 ruling, but I am even more amazed that counsel for the Com-
5 mission takes this position.

6 I will ask the reporter to mark what is presently
7 marked A&P Exhibit 3-A and please mark that as A&P Exhibit,
8 I believe it will be, 3, at this hearing.

9 (The document referred to was marked
10 Respondent A&P Exhibit 3 for identification.)

11 MR. McINERNEY: I would like to note for the record
12 that what is now marked A&P Exhibit 2 for identification
13 and A&P Exhibit 3 for identification were both used at the
14 deposition of this witness previously, and Commission counsel
15 is well aware of them and their authenticity.

16 JUDGE HINKES: Well, be that as it may, I think
17 your complaint is to Commission counsel and there is nothing
18 I can do about it.

19 MR. McINERNEY: The problem is, Your Honor, I have
20 been trying not to take up too much of Mr. Minkler's time;
21 I have been doing my best to expedite his examination.

22 JUDGE HINKES: I understand.

23 May I see your Exhibit 3, please?

24 MR. McINERNEY: Yes, sir.

25 MR. MATHIAS: Could we see Exhibit 3, please?

Testimony of Ralph R. Minkler

1 MR. McINERNEY: It is the document that was marked
2 as our Exhibit 3-A at Mr. Minkler's deposition, of which you
3 have a copy.

4 MR. STONE: Could we see a copy of it to compare
5 them? I don't think we have a copy.

6 JUDGE HINKES: Show it to them.

7 MR. McINERNEY: I think you are familiar.

8 JUDGE HINKES: Now, this last exhibit, Mr. McInerney
9 is a letter apparently signed by the witness. Perhaps you can
10 establish its authenticity sufficiently here and now; I don't
11 know.

12 MR. McINERNEY: That is exactly what I was
13 going to do, Your Honor.

14 By Mr. McInerney:

15 Q Showing you now what has been marked Respondent A&P
16 Exhibit 3, would you tell us what that is?

17 A A copy of a short letter from me to Jack Pentz.

18 JUDGE HINKES: Dated?

19 THE WITNESS: Dated October 1, 1965, signed by me.

20 By Mr. McInerney:

21 Q And does Respondent A&P Exhibit 2 --- is that the enclos-
22 ure to Respondent A&P Exhibit 3?

23 A It would certainly appear to be, yes.

24 MR. McINERNEY: I offer those both in evidence,
25 Your Honor.

1 JUDGE HINKES: Did you send these letters to Mr.
2 Pentz, Mr. Minkler?

3 THE WITNESS: Well, I don't recall either of them
4 at all. And, I'm sorry, but I do not. I have no recollection
5 of them. But that's certainly my signature; I concede that.

6 MR. MATHIAS: Your Honor, I see no basis for the
7 introduction of Respondent A&P Exhibit 2, through their
8 Exhibit 3-A. 3-A just states, here is a copy of the letter
9 delivered to A&P this morning. It makes no description of
10 the letter. The witness states no present recollection of
11 the letter.

12 JUDGE HINKES: No; the witness said it was.

13 MR. MATHIAS: Of the letter, but not of the
14 attached letter, the so-called attachment letter, A&P Exhibit 2.
15 The witness has stated he has no recollection of the document,
16 and the only thing he has identified is his signature on the
17 letter to Mr. Pentz, A&P Exhibit 3.

18 JUDGE HINKES: Mr. Minkler, do you remember signing
19 this letter?

20 THE WITNESS: No, sir.

21 JUDGE HINKES: Do you remember it being prepared by
22 anybody?

23 THE WITNESS: No, sir.

24 MR. MCINERNEY: Your Honor, I don't think the test
25 is whether he has a present recollection of signing the

Testimony of Ralph R. Minkler

1 document. I never imposed that test on anything that Mr.
2 Mathias tried to offer in evidence.

3 JUDGE HINKES: No; I wasn't testing his recollec-
4 tion of signing it as much as trying to ascertain that such a
5 letter actually originated and went out; that is all.

6 MR. MCINERNEY: Your Honor, when this case is over,
7 there will be no doubt about the bona fides and authenticity
8 of that document. I am awfully amazed at this problem.

9 MR. MATHIAS: Your Honor, a number of points have
10 been called to my attention here.

11 I was not familiar with the one letter or the
12 source, and we have discovered some of these letters. It
13 appears that the letter of October 1st, 1965, addressed to
14 E. R. Schmidt and G. Tarr for G. Tarr's signature was mailed
15 to Mr. Pentz on October 1, 1965.

16 We have copies of Borden file letters. We would not
17 contest that A&P received a copy of the October -- of the
18 E. R. Schmidt letter, that is, Respondent A&P Exhibit 2.

19 JUDGE HINKES: In which case?

20 MR. MATHIAS: I do object to the form in which it is
21 attempted to be introduced through a witness who has abso-
22 lutely no knowledge concerning the document and has answered
23 on several occasions that he does not. But we will stipulate
24 that the document was received by A&P.

25 JUDGE HINKES: Well, under the circumstances, I

1 shall receive these two exhibits of the Respondent A&P in
2 evidence.

3 (The documents referred to, heretofore
4 marked for identification as Respondent A&P Exhibits
5 2 and 3, were received in evidence.)

6 MR. WHITE: Your Honor, just as a matter of clari-
7 fication, I assume that I should inquire as to what counts it
8 is being received with respect to.

9 JUDGE HINKES: Mr. McInerney.

10 MR. McINERNEY: Well, I am not pressing any count
11 against Borden at this time, Your Honor, in this forum. I
12 think it goes to A&P's good faith on all three counts, as far
13 as I am concerned. But I am ~~not~~ introducing it in defense
14 of A&P.

15 JUDGE HINKES: I think that is a sufficient answer
16 for the purpose.

17 A&P is not a charging party in this case, and its
18 only interest, legitimate interest, would be in defending
19 charges against it. And, for that purpose, of course, it is
20 being received, but having been received it is available for
21 any purpose in this proceeding.

22 By Mr. McInerney:

23 Q Now, Mr. Minkler, His Honor asked you a few questions
24 about these documents, and they were questions that I had
25 intended to ask and I am afraid I interrupted the flow of it,

1 A Providing a certain reasonable notice were given.

2 Q Was there any written provision or agreement between Borden
3 and ASP that such reasonable notice be given?

4 A There was nothing in writing that I recall.

5 Q Was there any oral arrangement that you can recall which
6 provided that notice of any stated duration would be given
7 prior to termination?

8 A I do not recall any verbal conversation in that direction,
9 no, sir.

10 MR. MATHIAS: Your Honor, the witness has been on the
11 stand for another hour. I am at a point where I would like to
12 line up a few other exhibits. If we could take a recess now.
13 for about five minutes, it would be helpful.

14 JUDGE HINKES: We will be in recess for a brief
15 period.

16 (A brief recess was taken.)

17 JUDGE HINKES: On the record.

18 By Mr. Mathias:

19 Q Mr. Schmidt, I hand you Commission 102A through C and ask
20 you if you can identify this document, sir?

21 A Yes, sir.

22 Q Are you familiar with this document, Mr. Schmidt?

23 A Yes, sir, I am.

24 Q This document is addressed to you. Did you receive it,
25 sir?

19

1 A Yes, sir.

2 Q I note on CX 102B at the bottom of the page below the
3 signature there is a handwritten notation. Can you recognize
4 the handwriting thereon?

5 A Yes, that is mine, Mr. Mathias.

6 Q Also on Commission Exhibit 102C there are certain hand-
7 written notations. Do you recognize that handwriting, sir?

8 A Yes, sir, that is my handwriting.

9 Q Returning to Commission Exhibit 102A, do you know who put
10 the X in the margin at the bottom left hand side of that page?

11 A Most likely I did.

12 Q This carries over to the top of Commission Exhibit 102B
13 where there is another X next to the end of that same paragraph.
14 Is it your opinion that you made this X as well, sir?

15 A Yes, sir.

16 MR. MATHIAS: I offer CX 102A through C in evidence.

17 MR. MCINERNEY: No objection, your Honor.

18 JUDGE HINKES: 102A through C is received.

19 (The document referred to, heretofore marked for
20 identification as CX 102A through C was received
21 in evidence.)

22 By Mr. Mathias:

23 Q I hand you 103D through F for identification, Mr. Schmidt,
24 and I ask you if you can identify this document, sir?

25 A Yes, sir.

20

Q Referring to Exhibit 103D for identification in the middle of the page there is certain handwritten notations. Can you identify the handwriting therein, sir?

A My copy is not as distinct as it should be for ready identification. I do not believe that that is my handwriting.

MR. MATHIAS: Does Mr. McInerney have the original of this document? We were only supplied with a carbon.

MR. MCINERNEY: No, we don't.

By Mr. Mathias:

Q Returning to 103E there are certain handwritten notations at the upper right hand corner of this page and in the lower left hand corner of the page. Can you identify any of this handwriting, sir?

A It would appear to be the initials of RW. There, again, I cannot identify the handwriting in the upper right hand side, but the handwriting in the lower left hand corner is mine, Mr. Mathias.

Q Turning now to Commission Exhibit 103F, can you identify the handwriting appearing on this page, sir?

A All of it is mine with the exception of that portion that is circled in the middle of that page, and that I recognize as Mr. Bob Witzke's hand.

Q Who is Mr. Witzke?

A He was my assistant at that time.

MR. MATHIAS: I offer 103D through F in evidence

1 with the exception of the handwritten notation on 103D in
2 the middle of the page.

3 MR. MCINERNEY: We do not have any objection at this
4 time. May I ask one question with respect to these documents?

5 JUDGE HINKES: Yes.

6 VOIR DIRE

7 By Mr. McInerney:

8 Q You have been asked to refer to various handwritten notations
9 Mr. Schmidt, which you have identified as your own. For example,
10 if you still have before you Exhibit 102B and C --

11 A No, I do not have those in front of me, Mr. McInerney.

12 Q I just wanted to use that as an illustration, but perhaps
13 103E and F would serve just as well.

14 In identifying that handwriting, do you know what the
15 various notations refer to? Do they call to mind any present
16 recollection of what this was all about or what you were writing
17 about?

18 MR. MATHIAS: Is this in the nature of an objection?
19 I am not sure what Mr. McInerney is doing.

20 MR. MCINERNEY: I can save it.

21 MR. WHITE: What part was the part that was not
22 included in the offer?

23 MR. MATHIAS: 103D, the handwriting.

24 THE WITNESS: Mr. Mathias, if I may make reference
25 to 103F there is another section which is not in my handwriting.

1 I cannot read it other than I see the name "Bob." It is
2 directly below the circled portion with a line leading up to
3 that portion which is also not in my handwriting.

4 By Mr. Mathias:

5 Q You had identified the figures appearing there above in
6 the circled area as being the handwriting of Mr. Witzke. Can
7 you tell whether or not the handwriting at the bottom of the
8 line attached to the bottom of that circle is that of Mr. Witzke?

9 A Yes, sir.

10 Q It is the handwriting of Mr. Witzke?

11 A Yes, sir.

12 JUDGE HINKES: Commission Exhibit 103 is received.

13 (The document referred to, heretofore marked for
14 identification as CX 103D through F was received
15 in evidence.)

16 By Mr. Mathias:

17 Q Mr. Schmidt, in your dealing with Borden, did you
18 request any special formula or specifications for the milk or
19 dairy products to be supplied under the private label?

20 A It is my recollection that when we first discussed private
21 label that I indicated to them that the quotation should be
22 developed on the basis of advance order system."

23 Q I am talking about the formula for the product now, the
24 butter fat content of the milk, the curd or acidity of cottage
25 cheese, chocolate milk formula, and so on.

1 A No, sir.

2 Q There was no request for any special product according to
3 A&P's specifications?

4 A No, the only comment I recall in that regard was we
5 certainly wanted the product to meet the minimum legal require-
6 ments of the city of Chicago and any other community that we
7 had stores in that they would be servicing.

8 Q Borden was already servicing the greater portion if not
9 all of this territory, was it not?

10 A Yes, sir.

11 Q Presumably its products meet the legal minimum specifications
12 in all those areas already; is that not true?

13 A To the best of my knowledge that is true.

14 Q Is it your belief you would be receiving the same products
15 under the A&P label that Borden put under its own label?

16 A I don't recall that I knew what Borden's specifications
17 were for products under their own label. It is my recollection
18 that I indicated to them that the minimum legal standard should
19 be met for the A&P label.

20 Q In your dealings with any of the other dairies contacted,
21 did you request any other specifications of them?

22 A No, sir, I did not.

23 Q It was on this same basis -- as long as it met the legal
24 minimum specifications in each of these communities, that was
25 all right?

A Yes, sir.

Q In November of 1965 and the period immediately thereafter, when A&P introduced private label milk and dairy products into the store, did it reduce the price of the private label products?

A To my recollection, we did not.

Q Following the beginning of purchases of private label milk and dairy products from the Borden Company in November, 1965, and subsequently thereto over in the next year or two, did you inquire to see if Borden's prices were being made available to other of its customers in these market areas on the Borden label or private label?

MR. McINERNEY: Could I have that question read back, please. It is a little complicated.

MR. MATHIAS: I will strike it and rephrase it. It got a little involved.

By Mr. Mathias:

Q Following November, 1965, did your office inquire to see if the price which Borden had granted to you on private label had been made available to its other customers in these market areas?

A I do not recall that I made any direct inquire, no, sir.

Q Did you request Borden at any time that they supply you with their published prices and published discounts for the areas covered by your Chicago unit?

A No, sir, I did not, and I believe at that point in my

1 JUDGE HINKES: Be that as it may, I don't think this
2 witness again is in a position to tell us what the contract
3 provides. The contract is in evidence now, and you may make
4 your argument from the contract one way or the other. I don't
5 think this witness, however, is in a position to tell me what
6 the contract means.

7 MR. McINERNEY: Your Honor, I think, again you can,
8 if the Commission Counsel persist in saying that the document
9 speaks for itself, and we have to keep referring back to the
10 document, I am afraid we are going to lose some of the conti-
11 nuity of the testimony.

12 I would like to ask the witness, apart from the
13 document.

14 By Mr. McInerney: Did you ever see the document?

15 Q Can you tell us whether it was customary for dairies to
16 adjust the butterfat contents of their products at the request
17 of a customer, such as A & P?

18 MR. MATHIAS: Your Honor, I object. There has been
19 no foundation laid for this question at all. As a matter of
20 fact, on direct, and cross-examinations by Mr. McInerney, this
21 witness has stated that he was not an expert in dairy matters.

22 JUDGE HINKES: Be that as it may, I will allow the
23 witness to answer. If you know, Mr. Schmidt.

24 THE WITNESS: If I know? If I knew then?

1 By Mr. McInerney:

2 Q If you know now, is what I was asking.

3 A If I know now?

4 Yes, sir.

5 Q And your answer to the question is?

6 A Yes.

7 Q Thank you. This proposal, Commission Exhibit 94, from
8 the Dean Milk Company, also indicates that by developing a pre-
9 ordering system at the store level, further savings would result
10 of a little over three mills per point.

11 In analyzing this proposal, did you make the adjustment
12 in butterfat content, and in the preordering savings in com-
13 paring what the prices were that Dean was quoting as against
14 the prices that the Borden Company was quoting you?

15 Did you make that comparison at the time that you received
16 this Exhibit?

17 A (No response.)

18 Q If you would like to look ---

19 A It is my recollection, Mr. McInerney, that I did make such
20 a comparison, and I do recall having seen a document which was
21 a copy of that worksheet.

22 MR. MCINERNEY: May we see Commission Exhibit 95?

23 I have it here.

24 By Mr. McInerney:

25 Q Is that the worksheet you are referring to, Commission

1 MR. DEMBROW: So they will all be in Exhibit 261?

2 MR. MATHIAS: Yes.

3 By Mr. Dembrow:

4 Q Mr. Szczepaniak, you stated, I believe, in your direct
5 testimony that you became involved with the wholesale routes
6 in the Gary Hammond area around August of 1965 after you
7 had been on country routes for a while.

8 A That is right.

9 Q And in this connection you served A&P stores in the
10 vicinity described, is that correct?

11 A At no regular basis. I had no route.

12 Q Right, but from time to time you served A&P stores?

13 A Yes, if a need arose.

14 Q And I believe you stated you remember serving A&P stores
15 when they were receiving private label milk.

16 A Yes.

17 Q Do you recall ever serving any A&P stores in this area
18 when they were not receiving private label milk?

19 A Not that I can really remember. It has been so long.

20 Q I believe, Mr. Szczepaniak, that you stated that among the
21 stores you served only the A&P stores pre ordered. Is this
22 correct?

23 A That is right.

24 Q And during the occasions when you actually delivered to
25 the A&P stores were the orders ready for you when you arrived

at the store?

A Whenever I was on a route, yes.

Q In regard to the other stores, stores other than A&P, I believe you stated it was necessary for the driver to complete the order when he delivered to these stores.

A That is right. He would make up an order.

Q In connection with this making up of the order by the driver, was it necessary for him to go into the store to check the stock, the products that were in the display case?

A As a count.

Q Mr. Szczepaniak, during the occasions that you delivered to these stores, did you furnish the stores other than A&P stores with promotional material, signs and various other paper type material?

A The independents I know for a fact -- I remember distinctly -- whenever they had a sale on it was available to them if they wanted it.

JUDGE HINKES: What was available to them?

THE WITNESS: The signs, the sales signs, sir.

By Mr. Dambrow:

Q Did you furnish this type of promotional material and signs to the A&P stores? As best you recall?

A I can't really recall whether or not it was.

Q Mr. Szczepaniak, I believe you stated one of your charges or functions was making special deliveries to various stores,

JUDGE HINKES: Well would he know? That's the issue.

By Mr. McInerney:

Q Did you know the prices that were being charged on Borden label milk to A & P and the other chains, Mr. Tarr?

A Yes.

Q And were the prices that were charged to A & P and to the other chains on private label milk --

A Yes.

MR. MATHIAS: Your Honor --

MR. MC INERNEY: I am sorry Mr. Mathias is objecting in the middle of a question.

(The question was read by the reporter.)

By Mr. McInerney:

Q -- available to A & P and to the other chains on the proportionately equal basis?

MR. MATHIAS: Now I object your Honor on this basis. The question has no relationship to the notation on this document which states these prices are available to all on a proportionately equal basis.

Mr. McInerney's statement is the question is not related to that statement. He has asked a question concerning pricing to A & P and to other chains.

MR. MC INERNEY: Your Honor, Mr. Mathias objected when I used the exact language of the document and now he is

1 objecting that I haven't used the exact language of the
2 document and I will go back to using the exact language of
3 the document.

4 JUDGE HINKES: I would think we had better stick
5 to the exact language of the document.

6 By Mr. McInerney:

7 Q Mr. Tarr, this form states "These prices are available
8 to all on a proportionately equal basis."

9 A Yes, sir.

10 Q Now you knew what prices were being charged to the cus-
11 tomers that you served, is that correct?

12 A That is right.

13 Q Now, tell us please whether that statement was true?

14 MR. MATHIAS: I object, your Honor, there still
15 has not been any proper foundation. He has not established
16 whether this witness knew the pricing to all other customers
17 in this market area.

18 MR. MC INERNEY: I think that is something Mr.
19 Mathias can argue about later.

20 JUDGE HINKES: I think the witness's answer is
21 familiar that is the statement that he is familiar with the
22 prices that obtained is sufficient to be the basis for an
23 answer to the pending question. I will overrule the objec-
24 tion.

25

1 By Mr. McInerney:

2 Q Would you like the question read back, Mr. Tarr?

3 A No, sir. To the best of my knowledge this was true.

4 Q And did that remain true while you were with the Borden
5 Company?

6 A Yes. Wait. While I had anything to do with A & P.

7 Q Yes, sir.

8 A Yes. I don't know what happened prior to that.

9 Q Now, you stated this legend that we have been quoting
10 from was at some point in time removed from this form?

11 A Correct.

12 Q Now, your testimony I take it is that even though the
13 statement was removed from the form the statement remained
14 true, is that correct?

15 A Well, I am not qualified to answer that. I was asked to
16 remove the statement. This is on private label now you are
17 talking about, isn't it?

18 Q We are speaking of Borden label milk.

19 A Well, I can't remember whether it was removed from all
20 the master sheets or for Borden I think it was removed from
21 all sheets?

22 Q Would you look at the exhibit before you and see whether
23 paging through that will refresh your recollection as to
24 whether it was removed from the Borden label?

25 A Yes, it was. The reason for that it was removed from

Testimony of Gordon Tarr

1 all master sheets.

2 Q Mr. Tarr, let me show you what has been marked.

3 You have before you something that has been marked
4 Commission Exhibit 12-A. Have you seen that before?

5 A No, sir, not to my knowledge I haven't.

6 Q The fourth paragraph of that exhibit reads as follows:
7 There is in a letter from Mr. Minkler to Mr. Pentz dated
8 February 9, 1965.

9 "We are glad that this came through the Chicago
10 unit buyer. It illustrates how particular Ira Bartels is
11 when it comes to 'channels'.

12 "The Chicago unit buyer" -- and I take it Mr. Tarr
13 that refers to Elmer Schmidt about whom there has been some
14 testimony, is that correct?

15 A I should imagine so, yes, sir.

16 Q "-- is very friendly to us especially with Gordon
17 Tarr. We have given Gordon a most meticulous briefing
18 on his approach and I can tell you that I have a feeling of
19 confidence that he will do well."

20 Now, my question is this: Was it customary before
21 you had these meetings with Elmer Schmidt that you would dis-
22 cuss in advance of the meetings what you would say to Elmer
23 Schmidt, that you would discuss that with Mr. Minkler?

24 A In some instances yes.

25 Q And did you in effect sort of rehearse what kind of a

1 presentation you would give to Elmer Schmidt?

2 A I don't think I ever rehearsed it. I mean it was just
3 a matter of suggestion of how I should proceed.

4 Q Well, is it true that you were given a most meticulous
5 briefing on your approach to Elmer Schmidt?

6 A Well you know I don't know exactly what you would call
7 a meticulous briefing. Mr. Minkler might mean one thing and
8 to me it might mean something else. I don't think I can answer
9 it on that basis. I don't know what meticulous briefing is
10 exactly, and if it was what they gave me it wasn't my idea of
11 meticulous briefing however Mr. Minkler says it was so Mr.
12 Minkler is my boss.

13 I don't know how to explain it better than that.

14 Q Well is it the word "meticulous" that is troubling you?

15 A Yes, meticulous briefing I don't know what it means.

16 Q You don't quarrel that you were briefed?

17 A No.

18 Q You were briefed?

19 A Even to briefing, that could mean a broad field and
20 it wasn't a rehearsal or anything of that sort. It was
21 suggestions the way I handled thing. I can't remember too
22 much about that. I do know that we discussed things before
23 I went over there and I can't argue with Mr. Minkler that
24 it was a meticulous briefing because he knows what meticulous
25 briefing he means on the thing.

Testimony of Gordon Tarr

1 To my mind there wasn't -- the thing don't even
2 ring a big bell to me except the fact that I know we dis-
3 cussed things before I went over.

4 Q And that was customary?

5 A Well this was a major thing with us. I had always handled
6 almost everything with A & P. When this came along it was
7 beyond my ordinary duties. This was something big. It might
8 be the survival of our plants, it may have been my job, I
9 don't know if the thing didn't work out. And if we lost the
10 A & P account at that time why I don't know what would happen
11 here. It was our principal account and we needed the busi-
12 ness. We just had the plant up in Woodstock opened.

13 Q Well, I take it that your answer is yes to my question,
14 is that correct?

15 A Well, as I say, it's yes, but what are we going to say
16 meticulous briefing means?

17 Q I didn't use that word in my question.

18 May I have the question read?

19 (The question was read by the reporter.)

20 THE WITNESS: It was customary at times before I
21 went over there. Sometimes we didn't; sometimes we did.

22 By Mr. McInerney:

23 Q Well, on this important matter of the private label
24 negotiations did you customarily discuss with Mr. Minkler
25 what you were going to tell Mr. Elmer Schmidt?

1 A In most cases, yes.

2 Q Can you think of any exceptions?

3 A Yes, there were times when I went over and there hadn't
4 been any briefing. I mean I was given the sheets. They
5 prepared the sheets and that was what I asked for.

6 You know, when we went over with various things,
7 sometimes when I brought over various price things connected
8 with this private label thing they gave me the sheets, they
9 gave me the thing to fill out the sheets, and I made out the
10 sheets and took them over.

11 Q What would you fill out?

12 A The price sheets in the customary way of doing it on
13 the offer, on the offer. Usually it was done for me.

14 Q I thought you had told us that these prices were pre-
15 pared by someone else?

16 A They were all prepared by someone else. I didn't prepare
17 them but I am talking about the actual sheets I took over
18 there. Most of that was prepared for me too.

19 Q Well you have seen the various quotations that were sub-
20 mitted to A & P.

21 A Yes.

22 Q And I thought you testified that you hadn't prepared any
23 of those quotations?

24 A Well most of those, that is right, I hadn't.

25 Q Well can you tell us which --

1 A Not offhand no I can't. I can't say which ones. I
2 was briefed on some of the things, some of the things it
3 was just a matter of delivering the new deal that we came up
4 with, but prior to that I'd be into meetings in the office
5 and told the Board of Directors what Elmer had asked for.

6 Q And you received suggestions from them as to what you
7 should say to Elmer?

8 A Not always. That's what I mean. Sometimes they just
9 came back -- what they did, they discussed how they were
10 going to handle it and I knew some of that, but I wasn't told
11 always what to say.

12 Q But you can't think --

13 A I wasn't briefed in every instance when I went over
14 there with a new price thing.

15 Q Would it be fair to say that you didn't prepare any of
16 the private labeling price quotations that were submitted?

17 A I didn't prepare any of them myself. The actual
18 prices were prepared by someone else. But in some instances
19 I made out the letter form from the prices they had prepared.

20 Q The letter form?

21 A Well the form -- in some of them I had my secretary do
22 the thing when they gave me the whole price thing. Most cases,
23 no. And maybe I am wrong. Maybe there wasn't any, but it
24 seems to me there were sometimes that I did prepare the thing
25 from the prices they gave me. It was all worked out for me.

Testimony of Gordon Tarr

should be?

"Answer: No.

"Question: When you gave that final quotation to Mr. Schmidt at that time or thereafter did he tell you that you had actually met the competitor's price?

"Answer: No. He never said that."

MR. MATHIAS: Your Honor, I would object. I think the quotation reads exactly, "Not -- no, he never said that."

MR. MC INERNEY: That is right, Mr. Mathias.

JUDGE HINKES: Very well.

MR. MC INERNEY: "Question: Did you ask Mr. Schmidt what the competitive offer was?

"Answer: No.

"Question: And did he volunteer that information to you?

"Answer: No, never.

"Question: You never received that information?

"Answer: No." --

MR. MATHIAS: Your Honor, I would like to know whether this is leading. I don't know whether I am entitled to an objection or not. I didn't see anything read so far that contradicts anything this witness states, and a great deal of the deposition transcript is being read into this record and I don't see any basis being laid for it, so I think I am entitled at this point to be told where it's leading to.

1 MR. MC INERNEY: Haven't come to my question yet
2 and I think this is the appropriate time --

3 JUDGE HINKES: But is the reading of that lengthy
4 portion of the transcript necessary for the question?

5 MR. MC INERNEY: Yes, it is, sir and it's not very
6 much longer.

7 JUDGE HINKES: Very well.

8 MR. MC INERNEY: "Question: You never received that
9 information?

10 "Answer: No. I don't know now.

11 "Question: Did you ask who the competitive
12 bidder was?

13 "Answer: No.

14 "Question: And he didn't tell you this either?

15 "Answer: No.

16 "Question: Did you ask him whether the price
17 that Borden was quoting was above the competitor's price
18 or below the competitor's price?

19 "Answer: No.

20 "Question: Or precisely at the competitor's
21 price?

22 "Answer: No.

23 "Question: You didn't ask him any of those things?

24 "Answer: No.

25 "Question: And he didn't volunteer any of that

1 information?

2 "Answer: No, he didn't."

3 By Mr. McInerney:

4 Q Now, in the course of answering those questions, Mr.
5 Tarr, did you ever make any reference to the remark that you
6 have just referred to, something about sharpening your
7 pencil?

8 A I didn't at that time.

9 Q Did you in the course of testifying either at this
10 deposition or your prior testimony in December of 1969 ever
11 mention those words?

12 A I don't think I did but I am not sure. I don't think
13 I did. This was so, though. I don't think the thing ever
14 got around to questions that would bring that about. Those
15 answers I made would be the same answers that I am making right
16 now except through inference I brought this inference into
17 the thing. That's the only difference here in my statements
18 now and the statements I made then is my inference.

19 I answered you when it was yes or no, I answered
20 you no on all counts there.

21 MR. MATHIAS: Your Honor, before there are any
22 more questions I have an objection. There was nothing read
23 by Mr. McInerney that in any way has contradicted what this
24 witness has testified today and I move that the portion of the
25 transcript from the deposition hearing which Mr. McInerney has

1 read into this record from the bottom of page 511 to the top
2 of page 513 of the deposition be stricken.

3 MR. MC INERNEY: Your Honor, I have not only
4 this part of the deposition that I would like to refer to,
5 I have a series of other questions along the same line and I
6 think that when it is all developed you will see the connec-
7 tion between this prior testimony and the testimony that the
8 witness is now giving and I think that I should not be so
9 limited on a matter of this importance.

10 MR. MATHIAS: Your Honor, what he has done is to
11 put a portion of the deposition transcript into evidence
12 in this case without laying any foundation that he has
13 exhausted the recollection of this witness or that the
14 witness's present testimony is in any way contradictory to
15 that prior testimony, and I believe that whether it's on
16 cross or what the nature of the interrogation is, the same
17 rules apply to introducing prior deposition testimony as was
18 applied to complaint counsel at the time that Mr. Minkler
19 testified.

20 MR. MC INERNEY: I don't think that the same
21 rules apply on cross examination as they do on direct
22 examination and, as I recall, your Honor allowed Mr. Mathias
23 to in fact introduce portions of the deposition testimony in
24 evidence over my objection.

25 I think that on this aspect of the case in cross

1 examination I should not be hampered in this manner.

2 JUDGE HINKES: Well, there is no reason to get
3 involved with the recitation of a deposition which is con-
4 sistent with the testimony that has been given. That would
5 be a surplusage of the record and certainly to be avoided if
6 it's at all possible.

7 Now I have heard the recitation of the transcript
8 and I have also listened to the testimony of the witness,
9 and I must say that I see nothing incor-istent. He was not
10 asked the identical questions that he is being asked now.

11 MR. MC INERNEY: Your Honor, this remark was first
12 injected into this case --

13 JUDGE HINKES: Which remark are you speaking of?

14 MR. MC INERNEY: This "Sharpen the pencil" re-
15 mark.

16 JUDGE HINKES: That is right.

17 MR. MC INERNEY: -- after years of pre-trial
18 depositions and so on --

19 JUDGE HINKES: But that was hardly necessary to
20 read the depositions. I think had you asked the witness
21 simply had you ever mentioned this sharpening of the pencil
22 before in this proceeding he undoubtedly would have
23 answered no and that would be the end of it and you wouldn't
24 have to read the deposition.

25 MR. MC INERNEY: Your Honor, I will at the

1 appropriate time argue whether or not there is inconsistency
2 in the prior testimony, but I must be able to ask the witness
3 questions about the prior testimony before I can make that
4 argument. I intend to lay that foundation.

5 JUDGE HINKES: That is what I was referring to be-
6 fore when I said that I see nothing inconsistent. He was
7 not asked and he did not deny at that time anything concerning
8 the use of the words "Sharpen the pencil."

9 MC INERNEY: Because the words had never been men-
10 tioned, your Honor, and if I may, I would like to point out
11 that he was not asked anything about it yesterday when he
12 volunteered the following, and this is the problem.

13 The remark first came about at page 884 of the
14 record here. Mr. Mathias asked a question which is simply
15 as follows:

16 "You stated paper gallons. Did you mean the glass
17 gallon?"

18 And then he said, "Answer: Yes. We left the
19 glass gallons out and then sometime right about that time Elmer
20 said to me "Look, sharpen your pencil a little bit because you
21 are not quite there," meaning what the other party was bidding
22 I guess.

23 So we developed the new one and I think it came
24 out a little higher because we found some products" --- and
25 I think the witness said "By products." Is that right, Mr. Tarr?

1 THE WITNESS: Yes, sir.

2 MR. MC INERNEY: -- "found some byproducts that
3 we could give a little better deal on and we did."

4 Now, it wasn't in response to any question asked in
5 this proceeding either.

6 MR. MATHIAS: Your Honor, I object to the way
7 Mr. McInerney has characterized the record. He has left out
8 the question which Mr. Tarr has answered. He has read a
9 contradicting statement which complaint counsel read into
10 the record.

11 The actual question on page 884 was, "What oc-
12 curred after this communication from Mr. Schmidt?" and
13 "Answer: We changed the quote and left out the paper gallons
14 and developed the things along the lines" -- and complaint
15 counsel interrupted to clarify the record stating, "You stated
16 paper gallons. Did you mean the glass gallons?"

17 "Yes. We left the glass gallons out and then some-
18 time right about that time Elmer said to me 'Look, sharpen
19 your pencil a little bit because you are not quite there',"
20 and I believe that is very responsive to the question which
21 was, "What occurred after this communication from Mr. Schmidt"?

22 JUDGE HINKES: Well, in any event, this comes back
23 to what I said before. The questions that you are asking this
24 witness now are not the same questions that were asked of him
25 yesterday. The question asked of him was what took place.

Testimony of Gordon Tarr

1 Today you are asking him was such and such said. You are
2 pinpointing your question to a specific utterance and he
3 denies that utterance.

4 Now there is no necessary inconsistency in that
5 situation.

6 MR. MC INERNEY: Well, I am not sure, your Honor,
7 exactly what the witness is going to say with respect to
8 this, and I think if it is true that, as I think I can
9 represent to your Honor, this whole course of dealings
10 has been testified to several times and a lot of questions were
11 asked on every aspect of it, and now for the first time the
12 witness believes he remembers a remark that was never made
13 before, I think I am entitled to examine into that in some
14 detail.

15 JUDGE HINKES: Yes, you are, but it wasn't nec-
16 essary to read the deposition. That is my only point. All
17 you need do I say is ask this witness, not merely limit it
18 to the deposition, "Did you ever mention this business of
19 sharpening the pencil before yesterday," and the witness will
20 give us a straight answer to that.

21 And I will ask Mr. Tarr that very question.

22 Have you ever employed that expression about
23 sharpening the pencil, a remark, that you say Mr. Schmidt
24 used, before yesterday?

25 THE WITNESS: Not in any deposition before the

Testimony of Gordon Tarr

1 FTC.

2 JUDGE HINKES: In any investigational interview
3 or something of that sort.

4 MR. MATHIAS: He was never interviewed, sir, other
5 than the deposition of last December and an investigational
6 hearing in 1969.

7 JUDGE HINKES: Did you mention that in the
8 investigational hearing of '69?

9 THE WITNESS: No, I don't think I did.

10 JUDGE HINKES: Very well.

11 Now that is the inconsistency if you want to
12 argue it.

13 MR. MC INERNEY: I think it goes further, though,
14 your Honor, if I may continue.

15 JUDGE HINKES: You may.

16 By Mr. McInerney:

17 Q Didn't you on prior occasions testify that the only clew
18 you had was this \$50,000 remark that you attributed to Mr.
19 Schmidt?

20 A I don't know that.

21 Q Now, in an attempt to refresh your recollection with
22 respect to that, I would like to read from pages 516 and 17
23 of the deposition testimony.

24 MR. MATHIAS: Your Honor, suppose he starts by
25 showing those pages to the witness and seeing if the witness --

1 MR. MC INERNEY: No, I would like to get this in
2 the record. I think it's important.

3 MR. MATHIAS: If it's to refresh his recollection,
4 your Honor, it should be proceeded with in that manner first.

5 MR. MC INERNEY: Well, if it also --

6 MR. MATHIAS: Excuse me. I would like to finish.

7 If it's for the purpose of introducing this infor-
8 mation into the record, well then, I think that he must follow
9 the same rules that complaint counsel had to follow last
10 week and he must show that the witness's recollection has been
11 exhausted or that he has made an inconsistent statement.

12 JUDGE HINKES: I presume, Mr. Mc Inerney, you are
13 going to try to demonstrate to the witness some inconsistency,
14 is that right?

15 MR. MC INERNEY: In part, your Honor.

16 JUDGE HINKES: The witness should be allowed to see
17 the inconsistency first of all.

18 MR. MC INERNEY: Your Honor, I really don't believe
19 that I need to follow that approach. I think that whatever
20 the witness says at this point in time we have this prior
21 testimony which I believe is relevant to whether or not
22 his memory is entirely accurate with respect to this.

23 JUDGE HINKES: No. The witness is entitled to be
24 confronted with the alleged inconsistency and not simply to be
25 told of the inconsistency which may or may not be exactly true.

Testimony of Gordon Tarr

1 MR. MC INERNEY: I will do whatever your Honor
2 says of course, but I submit to you that I have a
3 right to have this record show the alleged inconsistency so
4 that I can refer to it at a later date.

5 JUDGE HINKES: After the witness has examined the
6 so-called inconsistency. Perhaps he has some sort of explana-
7 tion and then you can state for the record what that incon-
8 sistency is and make your argument on it.

9 MR. MC INERNEY: All right, your Honor.

10 I have only one copy of this.

11 By Mr. McInerney:

12 Q Sir, would you read on page 516, line 16 -- and so I
13 won't be accused of leaving anything out -- down to page 519,
14 line 12. There is some colloquy in there that I would have
15 left out if --

16 MR. MATHIAS: Your Honor, I believe first of all
17 it should start with line 4 for the very reason that it should
18 be pinpointed which meeting was being discussed here.

19 MR. MCINERNEY: Your Honor, there will come a
20 point in this proceeding when I will object, and I think that
21 point has now been reached, that Mr. Mathias's arguments
22 are suggestive to the witness and I think that he ought to
23 state his objection without doing that.

24 MR. MATHIAS: Your Honor, I will state my objec-
25 tion. I object to Mr. McInerney using a portion of the record

1 dealing with one meeting to attempt to contradict a statement
2 which Mr. Tarr has testified had occurred at a later date.

3 MR. MC INERNEY: As you see, this is the kind of
4 thing -- I am not refusing to let the witness read from line
5 4, which is what you are suggesting. What I do object to is
6 your characterization of what that shows. I think that is
7 entirely unnecessary.

8 JUDGE HINKES: Well, instruct the witness exactly
9 where he should be reading, if you will, Mr. McInerney, and
10 once again remind the witness of what he is reading this por-
11 tion for.

12 In other words, your pending question which has to
13 do with the \$50,000.

14 MR. MCINERNEY: Yes and whether that was the only
15 clew.

16 JUDGE HINKES: Yes.

17 By Mr. McInerney:

18 Q Commencing at the top of page 516, Mr. Tarr, would you
19 read that, and take your time.

20 A Yes.

21 MR. MC INERNEY: Incidentally this transcript
22 will show that Mr. Mathias at a certain portion of it re-
23 ferred the witness to his prior testimony in the investiga-
24 tional hearing, and I have that here too, which I would be
25

Testimony of Gordon Tarr

1 happy to show the witness so that he has it all in front
2 of him.

3 JUDGE HINKES: Dealing with the same question,
4 you mean?

5 MR. MC INERNEY: Yes, sir.

6 JUDGE HINKES: If it is a question of refreshing
7 the witness's recollection you may show him.

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1 MR. MATHIAS: Your Honor, I don't have a copy
2 of that with me at the moment and while the witness is reading
3 the other transcript I wonder if I might have a brief look
4 at this.

5 MR. MCINERNEY: Sure. That is our only copy
6 of that.

7 MR. MATHIAS: Thank you.

8 THE WITNESS: I have read it.

9 By Mr. McInerney:

10 Q Now, would you also read what Mr. Mathias referred to
11 in the course of that which I think he referred you to
12 something from pages 440 and 441 of the investigational
13 hearing transcript.

14 Have you read this now, sir?

15 A Yes.

16 MR. WHITE: Might we have the question again?
17 It has been so long I have forgotten it.

18 JUDGE HINKES: You might ask it again, Mr.
19 McInerney.

20 By Mr. McInerney:

21 Q Now, isn't it true, Mr. Tarr, that in the
22 investigational hearing transcript in 1969, and in the
23 deposition of 1971 you testified rather extensively with
24 respect to your conversations with Elmer Schmidt on this
25 subject of private label and stated that the only clue you had

1 with respect to what the competitive offer was was this
2 reference to \$50,000 being a drop in the bucket?

3 MR. WHITE: I would like to raise an objection.
4 Just so nobody will complain when I state my reasons, it
5 might be well if the witness leaves the room.

6 JUDGE HINKES: Mr. Tarr, would you be good enough
7 to step out of the room for just a moment?

8 THE WITNESS: All right.

9 (The witness withdrew from the Courtroom.)

10 MR. WHITE: Your Honor, I object to the question
11 as an improper summarization of the testimony that has been
12 shown to this witness. The transcript of the deposition,
13 starting at page 516, deals with a conversation, a particular
14 conversation that he had with Mr. Schmidt which, according to
15 his testimony, was an entirely different conversation than
16 the one about sharpening the pencil that occurred before that.

17 It occurred at the time that he was called over
18 there and told that they were shocked and all this sort of
19 thing as a result of the competitive price, and that is the
20 conversation at which the \$50,000 was mentioned.

21 The conversation concerning the sharpening of
22 the pencil happened several days later at least. It was
23 after another two or three meetings in between time and to, in
24 effect, ask him based on this and ask him a summary question
25 which assumes that this is contradictory of what he said I

1 think is improper, improper summarization.

2 JUDGE HINKES: The question is improper. The
3 question that should be asked of the witness now is the same
4 question that you asked him before he read these documents,
5 whether or not the \$50,000 saving was the only reference to
6 saving or bidding or anything else that you have in mind,
7 Mr. McInerney, in view of what he read in those documents.

8 He will either say that his testimony now ought
9 to be changed or else he will say no, in which case you can
10 introduce the so-called inconsistent statement to affect his
11 credibility and that is all there is to it.

12 You should not ask him a question which depends
13 upon your characterization of what he said. That is not the
14 issue.

15 The issue is what is the correct answer to your
16 preceding question. He answered it once. You are now
17 attempting presumably to demonstrate that that answer is not
18 consistent with other answers that he gave earlier.

19 Now, having read these other answers, you ask
20 him that same question once again, and if he changes his
21 testimony, well and good.

22 Then we have a change in his testimony and that
23 may be argued affecting his credibility. But, if he says no,
24 he maintains his original position and you think that earlier
25 testimony is inconsistent, you offer that inconsistent portion

Testimony of Gordon Tarr

1 in evidence because it is impeachment evidence and that is all
2 there is to it.

3 MR. McINERNEY: Your Honor, I tried not to have
4 to summarize the testimony for myself by reading it to the
5 witness and I was not permitted to do that, so I really think
6 that the objection now that I am somehow improperly summarizing
7 it is an attempt to box me in on the cross-examination of this
8 witness.

9 JUDGE HINKES: No. I see no boxing in of any
10 kind. You are still permitted to ask the original question
11 you asked. You are still permitted to get the witness to
12 contradict himself. You are still permitted to demonstrate
13 that he contradicted himself earlier. That is your case, as
14 I see it, and I see nowhere any boxing in.

15 This is solely for the purpose of establishing
16 an inconsistency. Therefore, ask him the question once
17 again and see if he will now be inconsistent.

18 MR. McINERNEY: I should point out to Your Honor
19 that whether or not there is a direct inconsistency here, and
20 I think there is, but even if there were not, the mere fact
21 that we had such extensive testimony on this matter so often
22 and in such detail and that this was not mentioned I think has
23 a bearing on whether or not this actually happened.

24 JUDGE HINKES: I don't dispute your right to make
25 that argument. I am only concerned with the mechanics now.

Testimony of Gordon Tarr

1 MR. MCINERNEY: Yes, sir.

2 JUDGE HINKES: And if he does then say that he
3 sees nothing inconsistent in his previous testimony with what
4 he is testifying today, then you simply offer this previous
5 testimony and argue its inconsistency with what he testified
6 today. That is all. You needn't go into any great length
7 about it here with this witness at this time. You simply get
8 him to state whether or not there is an inconsistency. That
9 is all.

10 MR. MCINERNEY: I don't think the witness is
11 going to state that there is an inconsistency.

12 JUDGE HINKES: Why should we speculate whether he
13 does or not? You will have the argument open to yourself.
14 In other words, whether he believes it inconsistent or not is
15 not the final answer. The final answer will be mine, based
16 upon the argument that you can advance and that will be in your
17 brief.

18 MR. MCINERNEY: I have no choice, Your Honor.

19 MR. MATHIAS: Shall I invite Mr. Tarr back in?

20 JUDGE HINKES: Yes, please.

21 (The witness re-entered the Courtroom.)

22 By Mr. McInerney:

23 Q Mr. Tarr, would you agree that your memory of the
24 private label negotiations that led up to this final quotation
25 from Borden to A&P, that your memory with respect to all those

1 events back in 1964 and 1965 is not perfect?

2 A I believe everything I testified and said definitely
3 that was so was so. I referred to notes that I had taken
4 in many instances.

5 Q But my question was whether ---

6 A There is a lot of things I have left out in the whole
7 thing. Maybe today and the other two times I didn't. There
8 were some things that might have occurred that I could look
9 up or that I could remember suddenly that did happen. I
10 didn't just remember this sharpening of the pencil deal. I
11 knew that all the time. It just never came about that I
12 testified, and there are probably many other things in my
13 testimony that wasn't a complete testimony of everything if
14 we didn't get on those subjects.

15 I won't say that there wasn't other things I
16 didn't say. I will say that. They could have been left out
17 of the thing that I could have said and it is in my mind. It
18 is in my memory.

19 Q Well, I think you told us yesterday at page 873 of the
20 transcript, "I may not have these things in proper sequence."

21 A This is correct.

22 Q Would you agree with this today?

23 A Yes.

24 Q And I think Mr. White asked you a question this morning
25 that had something to do with whether you had total recall of

Testimony of Gordon Tarr

1 A That is correct, approximately, and -- whether the
2 little addition or not, it is still approximately \$820,000.

3 Q And that was true throughout?

4 A Yes, but there could be a little difference in the
5 approximation.

6 JUDGE HINKES: But it was still approximately.
7 Is that what you are saying?

8 THE WITNESS: Yes, still approximately. In my
9 opinion, it was a little more but still approximately \$820,000.

10 JUDGE HINKES: Do I understand your testimony
11 that the result of Borden's work following Schmidt's request to
12 sharpen their pencils was not a material change in the
13 \$820,000 figure of savings but only a slight, if any, change?

14 Is that what you are saying?

15 THE WITNESS: I am saying something like Mr.
16 McInerney had mentioned. It might have been \$5,000, it might
17 have been \$8,000, it might have been more or less.

18 JUDGE HINKES: And you regard that figure as
19 being approximately \$820,000?

20 THE WITNESS: Yes.

21 By Mr. McInerney:

22 Q And you don't presently recall what it was?

23 A No, that is correct.

24 Q But you would agree with his Honor's question that it
25 was insignificant in your mind?

6447

Testimony of Gordon Tarr

1002

1 A It was insignificant in the all-over amount.

2 That is what Elmer said, that it was only a small
3 amount. "Just sharpen your pencil a little bit. There is
4 only a small amount."

5 Q Now, you did testify previously, did you not, that
6 Elmer did not tell you what the other quotation was?

7 A Yes, sir, I have said that many times.

8 MR. MCINERNEY: May we take a short recess, Your
9 Honor?

10 JUDGE HINKES: Very well. We will be in recess
11 for five minutes.

12 (A brief recess was taken.)

13 JUDGE HINKES: You may continue, Mr. McInerney.
14 By Mr. McInerney:

15 Q Mr. Tarr, is it still your best recollection that at
16 some point in these negotiations Mr. Schmidt said to you,
17 "Sharpen your pencil"? "You are not quite there yet."

18 A Yes, that he said to me on the telephone.

19 MR. MCINERNEY: Your Honor, we will offer as
20 our RA&PX 7, pages 511 through 520 of the deposition of Mr.
21 Tarr, taken on December 2 and 3 of 1971, and incorporated
22 in that is a reference to his prior testimony at the
23 investigational hearing. The reference is only to pages 440
24 to 441 of that ex-parte investigational transcript, but for the
25 sake of completeness, I think, so that there won't be any

END

AFTERNOON SESSION

1:30 p.m.

JUDGE HINKES: The hearing will be in order.

Mr. Dembrow, will you call your next witness.

MR. DEMBROW: A&P calls Mr. Orley Cooley.

ORLEY V. COOLEY was thereupon called as a witness for Respondent A&P and, having been first duly sworn, was examined and testified as follows:

JUDGE HINKES: Would you state your full name, please.

THE WITNESS: Orley V. Cooley, Senior.

MR. DEMBROW: I would like to note that Mr. Cooley's testimony is being presented in regard to counts I and II of the Complaint.

DIRECT EXAMINATION

By Mr. Dembrow:

Q Mr. Cooley, could you give us your current address?

A M.R. 35, Box 69, Valparaiso, Indiana.

Q By whom are you currently employed?

A The A&P Tea Company.

Q In what capacity are you employed currently by A&P?

A Manager of their store in Valparaiso, Indiana.

Q How long have you been manager of this store?

A Since May of 1962.

Q Have you been the manager of this store in Valparaiso continuously from May of 1962 until the present date?

1 A Yes, in Valparaiso.

2 Q Mr. Cooley, are you familiar with the terms pre-ordering,
3 or advance ordering?

4 A Yes.

5 Q Would you please explain what these terms mean to you?

6 A Pre-ordering as we use it is ordering our merchandise
7 in advance so that any deliveryman that delivers directly to
8 the store can pick up an order for an advance delivery at an
9 advance time.

10 Q In other words, when he delivers goods to the store he
11 picks up an order for a future delivery?

12 A Yes.

13 Q Mr. Cooley, directing your attention to the period 1965
14 to 1970, did you know a man by the name of Roy Marquardt?

15 A Yes, I did.

16 Q Could you please identify him?

17 A He was our deliveryman or milk deliveryman.

18 Q What brands of milk was he delivering, was Mr. Marquardt
19 delivering to your store?

20 A Borden label and then A&P label.

21 Q Mr. Cooley, directing your attention to the period
22 beginning in 1965 when A&P introduced private label milk and
23 dairy products, did your store in Valparaiso pre-order its milk
24 and dairy products?

25 A Yes, we did.

Testimony of Orley V. Cooley

6450

5843

1 Q To whom was the order given?

2 A To the milk driver, Mr. Marquardt.

3 Q By whom was this order given to Mr. Marquardt?

4 A By myself and sometimes the dairy clerk.

5 Q Mr. Cooley, was this order prepared and waiting for
6 Mr. Marquardt when he arrived at the store?

7 A Yes.

8 Q Mr. Cooley, again directing your attention to the period
9 after November '65 when A&P introduced private label milk, until
10 1970, did Mr. Marquardt prepare the milk and dairy products
11 order for your store?

12 A There possibly could have been times, due to vacations or
13 illness, that he would have written the order from our order
14 control card, but to order the milk in advance himself, I
15 don't think he ever did.

16 Q You mentioned your control card. What was this document?

17 A It was a card that we had that we kept an inventory of
18 our merchandise on. We ordered from what was sold from
19 delivery to delivery.

20 Q Who prepared this control card?

21 A Myself, primarily.

22 MR. DEMBROW: We have no further questions.

23 JUDGE HINKES: What did you call this document?

24 THE WITNESS: Order control card.

25 JUDGE HINKES: Nothing from you, Mr. Schaefer?

MR. SCHAEFER: No, sir.

6451

Testimony of Robert G. Havemeyer

8550

s-33

1 above it in all four columns to get the cost per point
2 appearing on the general selling and administrative line.

3 Finally, the total marketing cost is the sum of the
4 subtotal and the administrative expense.

5 Q So, what you have done, sir, then is in each case, both
6 in the case of A&P and each of the various other customers
7 involved in Exhibits 170 through 179, taken the sum total
8 of their various cost elements listed above and applied this
9 5.2 percent to those total cost elements to arrive at the
10 share of general selling and administrative expense that you
11 are applying to each of these customers?

12 A Yes.

13 Q Then you have added that calculated expense to the other
14 subtotal to arrive at what you term on these exhibits as
15 total marketing cost; is that correct, sir?

16 A Yes.

17 Q Now, sir, in the calculation of the various expenses you
18 have not specifically in any instance determined the amount
19 of time and expense involved in Gordon Tarr's service to
20 A&P stores, have you, sir?

21 A Would you read the question back?

22 (The pending question was read by the reporter.)

23 THE WITNESS: No.

24 By Mr. Mathias:

25 Q And similarly, you have not specifically determined the

Testimony of Robert G. Havemeyer

MS-34

1 amount of expense involved in the work of Messrs. Malone,
2 ~~Pargier and Coetz~~ ^{Minkler and Gase} in dealing with A&P both preceding and during
3 the course of this contract concerning the pricing under the
4 contract; is that not correct, sir?

5 A That is correct.

6 Q Now, sir ----

7 A Excuse me. I tried to answer your questions specifically,
8 but now I do want to add a comment. You may recall -- and
9 I cannot point to the transcript reference -- but there was
10 testimony that once the contract was arranged, at least the
11 considerable amount of time which had been spent in developing
12 the contract or the negotiation was then severely reduced
13 and I think one of the gentlemen said he then went on to
14 concentrate not on the A&P business but on the operation and
15 consolidation of branches.

16 Q That was Mr. ^{Minkler} ~~Pargier~~, was it not, sir?

17 A I am not certain. I think so.

18 Q Well, sir, then following the determination of the
19 total marketing cost you have then compared in each instance
20 the marketing cost under the A&P column with that in the
21 column headed by the various other stores represented in
22 170 and 172 through 179 to arrive at a figure marketing
23 cost per point in excess of cost to serve A&P; is that correct,
24 sir?

25 Yes.

6453

A & P Chicago

THE BORDEN COMPANY
CENTRAL DIVISION

1821 S. KILBOURN AVENUE
CHICAGO, ILLINOIS 60623



September 16, 1965.

RALPH R. MINKLER
PRESIDENT

Mr. Jack B. Pentz, President
Borden's Milk and Ice Cream Co.,
Division of The Borden Company
350 Madison Avenue
New York, New York 10017.

Dear Jack:

The attached is two sets of new A & P price quotations - one is for Harry Archer.

The very first sheet in this material sets out the annual quotation differential between all Borden Label and all A & P Label, based upon these new prices. The sheets which immediately follow, detail this differential for each of the five A & P areas. Following that, you will find the specific prices now being offered.

We had anticipated making the presentation of these figures this morning at 8:30 o'clock. However, we got a call about 6:30 a.m. from Elmer Schmidt saying that the date would have to be changed as he was having to take his wife to the hospital. They have been expecting an heir and he had warned us that there just might be a conflict.

As things stand right at the moment, I don't know just when he will want to see us, but rather imagine it might be tomorrow. We will inform you, of course, as soon as there are any further developments.

Cordially,

OBTAINED
BY

Hearts EXHIBIT 36
3/13/68
Richard A. Minkler
ATTORNEY GENERAL

Ralph R. Minkler.

RRM*mlb
enclosure.

FILE NO. 671-0149

(To be reviewed)

Central
A & P
areas
1-2-3-4-5

296

6454

3/31/67

FILE MEMO

A & P

Tarr called to ask consideration of Malone accompanying Gose and Tarr to meet with Bartels, indicating that his presence might be helpful to the matter. There was no objection.

Met at the A & P office at 10:15 A.M. Met Bartels who was joined with Witzke and Carver from A & P and Gose, Tarr and Malone from Borden.

Gose indicated that we were there in response to a request for additional data, principally in respect to furnishing the wage rates in effect after May 1, 1966 and immediately before. Stated that we (Borden) were engaged, during the past day, in reviewing current factors relative to the union negotiations immediately coming up, and this is why we had not supplied the information earlier this week. Bartels indicated he did not know why it took so long, but he understood the problem.

Gose presented Bartels, Witzke and Carver with our letter dated 3/31/67, indicating that he believed the data set forth complied with their request.

Bartels read the letter and examined the two schedules attached thereto, the others (Witzke and Carver) doing likewise. He paid a lot of attention to Schedule No. I which set forth in detail the various elements of wage cost increase. He made inquiry as to what the vacation cost represented, the pension and welfare cost, and particularly the increase in Social Security. These increased cost factors were explained to him -- the Social Security factor was belabored and he (Bartels) had Carver check same. He left, and upon returning; gave Bartels a note and no more discussion ensued.

Bartels made reference to the fact that the Chicago market had about the largest spread between the Class I price and the in-store price of any market where comparisons have been made. He indicated that there were markets where they were able to buy cheaper than in Chicago. The point was stressed that he can't tell us (Borden) what to charge but we have to realize that this factor gets to a point where they can buy cheaper and further indicating that competitors have been in to see them continually. He wanted us to understand that he was not threatening us (Borden) but this was the case.

Bartels questioned why we (Borden) waited so long to secure this increased cost factor which occurred last May, and raised the question

3/31/67

about any subsequent wage increases that will result from 1967 negotiations.

Gose indicated that we (Borden) had requested this consideration last June (1966) which was turned down by A & P. Gose stated that we (Borden) had attempted to work out the matter, but the need still remains. Bartels stated that Borden's need was Borden's problem, and he was only concerned about buying at a competitive price.

Bartels referred again to the schedule which disclosed the various classes of wage cost increase. Looking at the basic wage increase of 10 cents an hour for dairy employees and 6.3 cents for wholesale drivers, he estimated that this was about a 3% to 4% increase. Further, he estimated that it appeared to him that we (Borden) had a payroll cost of about \$100,000 a week. Malone indicated that it was about in that neighborhood (week of 5/28/66 - \$86,000.) He went on to state that wage items such as vacations, etc. really have to come out of other cost reductions - improved efficiencies, you just can't keep adding on and on to a price the full impact of each wage cost increase. He stated that they have the same problem in their bakery operation and they have been able to effectuate efficiencies that absorb such increased wage costs. Malone pointed out that this adjustment is a much more difficult matter when related to a most modern, newly constructed plant like Woodstock which was opened early in 1966 and was fully automated. Malone also pointed out that we (Borden) had been able to keep costs favorably in line because of additional volume secured which helped to offset other rising costs which have occurred in our business. Bartels continued to stress the fact that this type of wage costs have to be absorbed by further efficiencies.

The cost increase applying to paper cartons was raised by Bartels. He indicated that this factor had not been brought up in any other market and asked Carver if he had any recollection of this factor and he indicated "no." Witzke indicated that some increases took place in respect to paper bags - two 5% increases, one of which was rescinded.

Bartels referred again to the matter of being competitive in his buying program and indicated that we (Borden) were no doubt familiar with the fact that F.T.C. had requested information from them (A & P) and that this presented no problem to them as they would simply submit copies of our billings. Carver stated that the requests referred to prices and volumes going back to 1965. Gose then indicated that when he was summoned to the phone during this meeting, it was a call from Mr. Greaves, who heads up Borden's Chicago law office, who informed him that Borden had received

FILE MEMO - A & P

3/31/67

a request for information from F.T.C. and considered it important to bring this, especially when he was conferring with A & P. This matter did not seem to disturb Bartels. He asked a question about "returns" and was advised that the only credit A & P received was in connection with faulty containers or inferior quality.

Bartels then returned to the wage cost increases. He indicated he found no fault with our information -- he believed it and stated that there might be some justification in recouping some of the costs. He constantly touched on buying competitively, stating that this position was not to be considered as a threat. Believed strongly that certain elements of wage cost increases had to be absorbed through increased efficiencies -- also had to believe that there was some leverage in the cost effects. He indicated that he recognized the basis of the hourly increase demand but could not look at the other items. He expressed that in his opinion he could possibly look at a price adjustment factor of \$.0018 per point and asked us to think it over.

Gose again expressed the fact that these costs, as we had expressed, were real and valid cost increases. Bartels intimated that he can't tell us how to run our business -- that is Borden's decision to make. However, if we (Borden) want to consider this factor, he would see what could be done.

Gose expressed his gratitude for this exchange of views and discussion of the problem. Bartels stated they were very well satisfied with the quality of the products supplied and the service rendered. Gose thanked him and indicated that the matter will be reviewed further and that communications would be made shortly.

88

6457

FRESH MILK PRODUCTS
FOOD STORE AND GROCERS' DISCOUNT SCHEDULE
EFFECTIVE NOVEMBER 18, 1963

Average Units Purchased
Per Delivery

Discount Schedule

0 to 149	13%
150 to 199	15%
200 to 249	Plus 2%
250 to 299	Plus 4%
300 and over	Plus 6%

Unit Values as Follows:

Gallons - 4; Half Gallons - 2, Quarts - 1,
 Pints Half & Half - 1, Half Pints Whipping Cream - 1,
 Sour Cream - 1, Sour Cream Dips - 1, Yogurt - 1,
 Triple Whip - 1, Cottage Cheese 8 oz., 12 oz., 16 oz. - 1,
 32 oz. - 2.

THE BORDEN COMPANY
 Chicago Metropolitan Region

outside Chicago, the union contracts would allow, and it became a matter of economics, which was the procedure to follow.

Q And in those cases, what procedure would be followed?

A I don't recall.

Q But it would be delivered on the trailer truck rather than on the smaller truck, then?

A If it was possible.

HEARING EXAMINER SCHRUP: Were any of these areas outside of the State of Illinois that was served by Woodstock?

THE WITNESS: No, sir.

We are talking, sir, on product moving out of Woodstock.

HEARING EXAMINER SCHRUP: That was all confined to the State of Illinois?

THE WITNESS: That was all confined to the State of Illinois.

Some of the product might move -- I am trying to think --

No, it was all confined to the State of Illinois.

By MR. Mathias:

Q Mr. Malone, you stated that this particular distribution system was used only the the State of Illinois. Were distribution plants in other States served by the Woodstock plant?

A Distribution points at Hammond, Indiana, were served.

They weren't really served by, in my opinion, the Woodstock plant. The merchandise was picked up by over the truck haulers

1 and transported to a Hammond location, and from that point
2 it was distributed.

3 Q Borden did have a distribution plant which it operated
4 in Hammond. Is that correct?

5 A That is right, sir.

6 Q The milk distributed from that distribution plant came
7 from the Woodstock plant, after it was opened. Is that
8 correct?

9 A It was produced at the Woodstock plant.

10 Q Now, sir, I don't understand quite how it got from
11 Woodstock to Hammond. How was this transportation handled?

12 A Via over-the-road transport facilities.

13 HEARING EXAMINER SCHRUP: Were these deliveries to
14 terminals in the State of Indiana in bulk?

15 THE WITNESS: No, it was a finished product.

16 HEARING EXAMINER SCHRUP: Finished product when it
17 left the Woodstock plant?

18 THE WITNESS: That is right, sir.

19 By Mr. Mathias:

20 Q Whose over-the-road transport truck was used to get it
21 from Woodstock to the Hammond point?

22 A They were both independent haulers and some of it was
23 moved by Borden transport operation.

24 Q Did the Hammond distribution point receive milk from
25 any other source, other than the Woodstock plant?

1 A Not to my knowledge.

2 Q Do you recall whether or not there were any other dis-
3 tribution points in States other than Illinois which were
4 supplied with milk produced at the Woodstock plant?

5 A Generally not to my knowledge.

6 Q Sir, we have covered the fact that the Woodstock plant
7 replaced a plant in Chicago and one in Hammond. Did it also
8 replace any other? Was any other plant of Borden's closed
9 as a result of the opening of the Woodstock plant?

10 A Not to my knowledge.

11 Q How did the capacity of the Woodstock plant compare with
12 the combined capacity of the two it replaced?

13 A I would say it was of the same volume.

14 Q In other words, it was capable of producing all of the
15 milk that the other two could put out together. Is that
16 correct?

17 A Plus.

18 Q Plus a little more?

19 A Yes, sir.

20 Q Was it less expensive to process milk through the
21 Woodstock plant than through the older plants that it replaced?

22 A I don't know.

23 Q Are you familiar with the procurement of raw milk for
24 the Woodstock plant, sir?

25 A I don't know what you mean. Am I familiar with it? I

ANALYSIS OF O'HARE BRANCH ROUTE BOOKS
NON-ASP STORES, ROUTES 1-W, 12-W, 10-W

2 Weeks End 3/17/66

Customer	Books	Page	Number of Deliveries	Number of Points	Number Cases Total	Number Cases Glass	Total \$'s/ 2 wks.
I Allegedly Injured Stores							
Stricklands 0156	16	10/19	12	1,761.00	67.22		559.08
Stricklands 0159	3	13	12	2,146.00	89.00	11.25	591.25
Mr. Control	13	21	4	1,628.00	70.03	17.75	462.04
Madison Food 0212	18	3	12	2,550.50	112.77	36.50	731.92
Mayfair 0107	3	6	12	5,192.00	236.46	91.50	1,343.71
Mitchell Food 0139	3	15	12	3,055.75	141.03	43.25	839.16
Congress Foods 075	18	14	12	1,932.75	87.44	26.50	519.90
Jim's Grocery 090	18	15	12	4,593.50	200.07	53.00	1,238.44
II Small Stores							
Store A							
6	3	16	12	1,104.25	51.83	1.75	209.26
329	3	17	12	796.50	34.26	4.00	212.90
17	13	10	12	1,022.00	39.71	.75	292.71
16	13	11	12	635.50	20.79	9.25	171.44
253	13	17	12	1,402.00	66.56	30.50	392.93
335	13	18	12	690.00	33.67	16.50	198.36
103	13	22	12	630.00	28.33	7.25	196.01
134	13	23	12	1,268.25	57.71	19.75	350.75
157	13	24	12	613.00	34.26	20.00	159.06
3	3	03	12	503.50	18.86	---	140.72
189	18	04	12	869.00	34.99	---	269.74
191	18	17	12	649.00	25.22	---	203.53
8	18	26	12	694.50	28.78	3.25	199.04

Grocer Customer Total 250 33,787.00 1,487.15 392.75 9,349.46

Average Points/Case 22.7193

0086

ANALYSIS OF O'HARE BRANCH ROUTE BOOKS
 MON-ASP STORES, ROUTES 1-W, 13-W, 18-W

3/19/66

Number of Points	Number Cases Total	Number Cases Class	Total \$'s/ 2 wks.	Month's Total Dollars	Cases Per Delivery	% Class Cases	\$ Value/Point 7th. Period	Point Per Case
1,761.00	67.22		559.08	1,162.93	9.60	---	.3175	26.26
2,146.00	89.16	11.25	591.25	1,370.82	7.43	12.42	.2755	34.67
1,628.00	70.03	17.75	462.04	3,674.63	17.51	25.35	.2838	27.25
2,550.50	112.77	36.50	731.92	1,500.71	9.40	32.37	.2870	27.92
5,192.00	236.46	91.50	1,343.71	3,056.50	19.71	38.70	.2388	21.93
3,055.75	141.03	43.25	839.16	1,654.04	11.75	30.67	.2746	21.67
1,932.75	87.44	26.50	519.90	1,135.48	7.29	30.31	.2640	22.18
4,593.50	200.07	53.00	1,238.44	2,640.27	16.67	26.49	.2696	22.96
1,104.25	51.03	1.75	209.26	628.13	4.32	3.38	.2620	
796.50	34.26	4.00	212.90	434.89	2.86	11.68	.2673	
1,022.00	39.71	.75	292.71	644.09	3.31	1.89	.2864	
635.50	20.79	9.25	171.44	361.41	2.40	32.13	.2696	
1,402.00	66.56	30.50	392.94	666.26	8.55	45.83	.2693	
690.00	33.67	16.50	178.36	334.18	2.81	49.00	.2675	
630.00	28.33	7.25	196.01	354.26	2.34	23.59	.2593	
1,260.25	57.71	19.75	350.25	697.32	4.01	34.22	.2762	
613.00	34.26	20.00	159.06	291.98	2.86	53.38	.2555	
503.50	18.06	---	140.72	250.61	1.57	---	.2954	
869.00	34.99	---	269.74	536.83	2.92	---	.3104	
649.00	25.22	---	203.53	403.88	2.10	---	.3136	
694.50	28.78	3.25	199.04	341.85	3.40	11.29	.2866	

33,787.00	1,487.15	392.75	9,349.48	22,393.07	9.95	26.41%	.2773	23.71
22,7193								

A&P RECAPITULATION OF PHYSICAL DELIVERIES

A&P #09 W04 MAR 66

PER ROUTE BOOK 4.11

ITEM	10	11	12	13	14	15	17	18	19	20	21	22	TOT	PTS
	UNITS													
H GAL	60	72	72	60	60	84	43	48	48	60	72	84	768	1536.00
OTS	60	60	60	48	48	72	36	72	60	60	72	72	720	720.00
PP GAL	6	6	6	6	6	12	6	6	6	6	6	12	84	336.00
CHOC OTS	3	0	0	0	0	3	3	3	3	3	0	0	18	18.00
BM H GAL	6	3	0	0	0	3	3	0	6	6	8	6	44	44.00
BM OTS	6	3	0	0	0	3	3	3	6	6	8	6	138	276.00
BM H GAL 2	8	8	8	12	18	24	12	12	8	10	12	6	104	208.00
H GAL SKM	12	8	12	6	6	0	12	8	8	12	12	8	178	178.00
OTS SKM	18	16	24	6	12	0	18	18	12	18	12	24	18	18.00
H PT XXX	3	0	3	0	0	0	0	0	3	0	3	6	254	254.00
PT H&H	24	18	18	12	24	48	24	12	24	30	10	10	3670.00	
TOTAL POINTS														

10	11	12	13	14	15	17	18	19	20	21	22	TOT	PTS
60	72	72	60	60	84	43	48	48	60	72	84	768	1536.00
60	60	60	48	48	72	36	72	60	60	72	72	720	720.00
6	6	6	6	6	12	6	6	6	6	6	12	84	336.00
3	0	0	0	0	3	3	3	3	3	0	0	18	18.00
6	3	0	0	0	3	3	0	6	6	8	6	44	44.00
6	3	0	0	0	3	3	3	6	6	8	6	138	276.00
8	8	8	12	18	24	12	12	8	10	12	6	104	208.00
12	8	12	6	6	0	12	8	8	12	12	8	178	178.00
18	16	24	6	12	0	18	18	12	18	12	24	18	18.00
3	0	3	0	0	0	0	0	3	0	3	6	254	254.00
24	18	18	12	24	48	24	12	24	30	10	10	3670.00	

A&P RECAPITULATION OF PHYSICAL DELIVERIES

A&P #09 W04 MAR 66

PER ROUTE BOOK 4.12

ITEM	10	11	12	13	14	15	17	18	19	20	21	22	TOT	PTS
	UNITS													
IAL GLASS	4	8	4	4	4	8	4	4	4	4	4	4	56	224.00
CHOC SHK H	0	0	0	0	0	4	0	0	0	0	6	9	19	4.75
H GAL SKM	0	0	0	0	0	0	0	0	0	0	0	4	4	8.00
SOUR CRM 1	0	0	0	0	0	0	0	0	0	0	0	3	3	6.00
SOUR CRM 8	3	0	0	6	4	6	6	0	6	6	3	6	46	46.00
DIP-F0	0	0	0	0	0	4	0	0	3	3	4	3	17	17.00
WUP	0	0	0	0	3	2	0	0	0	3	3	0	11	11.00
SO H&H PT	2	6	8	8	8	10	3	0	3	3	3	6	60	60.00
TRIP WHP 8	3	0	0	0	0	0	0	0	0	0	0	0	3	3.00
YOGURT H P	4	4	0	6	6	4	4	0	4	4	4	9	49	49.00
GAL 2%	0	0	0	0	0	4	4	0	0	4	0	0	12	48.00
TOTAL POINTS														476.75

10	11	12	13	14	15	17	18	19	20	21	22	TOT	PTS	
4	8	4	4	4	8	4	4	4	4	4	4	56	224.00	
0	0	0	0	0	4	0	0	0	0	0	6	9	19	4.75
0	0	0	0	0	0	0	0	0	0	0	0	4	4	8.00
0	0	0	0	0	0	0	0	0	0	0	0	3	3	6.00
3	0	0	6	4	6	6	0	6	6	3	6	46	46.00	
0	0	0	0	0	4	0	0	3	3	4	3	17	17.00	
0	0	0	0	3	2	0	0	0	3	3	0	11	11.00	
0	0	0	0	3	2	0	0	3	3	3	6	60	60.00	
2	6	8	8	8	10	3	0	0	0	0	0	3	3.00	
3	0	0	0	0	0	0	0	0	0	0	0	49	49.00	
4	4	0	6	6	4	4	0	4	4	4	9	49	49.00	
0	0	0	0	0	4	4	0	0	4	0	0	12	48.00	

PER ROUTE BOOK 4.05

ITEM	10	11	12	13	14	15	17	18	19	20	21	22	TOT	PTS
						UNITS							144	288.00
H GAL	12	12	24	12	12	12	12	0	12	12	12	12	312	312.00
OTS	36	24	12	36	36	36	24	12	24	24	24	24	68	272.00
PP GAL	6	6	6	6	6	14	6	0	6	0	6	6	20	20.00
CHOC OTS	2	0	2	2	0	4	4	2	4	0	0	0	32	64.00
BM H GAL	2	2	0	4	6	3	0	0	3	4	3	5	44	44.00
BM OTS	0	3	4	6	6	4	4	0	0	6	3	6	68	136.00
BM H GAL 2	9	6	4	10	6	10	4	0	0	0	6	10	63	126.00
H GAL SKM	8	3	6	9	6	9	3	0	0	3	9	8	55	55.00
OTS SKM	9	0	10	6	4	0	6	0	0	0	6	8	32	32.00
H PT XXX	3	0	0	2	4	5	2	2	0	0	6	8	192	192.00
PT H&H	24	12	0	24	24	24	12	12	0	24	12	24	1541	1541.00
						TOTAL POINTS								

KEAR
W PAUL

[illegible]

PER ROUTE 290K 4.06

0 0 106

[illegible]

A&P RECAPITULATION OF PHYSICAL DELIVERIES

A&P #33 W04 MAR 66

PER ROUTE BOOK 4.17

ITEM	10	11	12	13	14	15	17	18	19	20	21	22	TOT	PTS
	UNITS													
H GAL	12	0	12	12	24	12	12	12	24	24	36	12	192	384.00
OTS	12	0	12	12	0	0	12	0	12	12	12	0	84	84.00
PP GAL	6	0	4	0	6	4	0	6	6	6	6	6	50	200.00
CHOC OTS	1	2	0	1	2	2	1	0	2	1	1	1	14	14.00
BM H GAL	2	1	4	2	2	0	1	2	2	0	3	1	20	40.00
BM OTS	2	2	4	3	2	0	4	2	2	2	5	2	30	30.00
LM H GAL 2	2	1	0	2	2	3	1	0	3	2	2	2	20	40.00
H GAL SKM	2	1	0	3	3	5	2	0	4	2	4	3	29	58.00
OTS SKM	1	3	4	2	2	4	3	0	8	3	5	3	38	38.00
K PT XXX	1	0	0	2	2	2	0	1	0	0	6	2	16	16.00
PT H&H	5	0	0	0	0	0	0	0	0	0	0	0	5	5.00
	TOTAL POINTS													909.00

A&P RECAPITULATION OF PHYSICAL DELIVERIES

A&P #33 W04 MAR 66

PER ROUTE BOOK 4.18

ITEM	10	11	12	13	14	15	17	18	19	20	21	22	TOT	PTS
	UNITS													
GAL GLASS	8	4	4	6	10	12	4	0	4	8	8	0	68	272.00
H GAL	36	12	48	48	36	48	12	0	36	36	48	36	396	792.00
OTS	0	24	24	24	24	24	12	12	24	24	24	24	240	240.00
JC SKM H	0	0	0	0	0	0	0	2	2	0	2	2	8	16.00
CHOC SHK H	0	0	0	0	6	0	0	0	0	6	6	0	18	4.50
PT H&H	0	20	20	15	25	0	25	25	15	20	15	0	180	180.00
SOUR CRM 1	4	0	2	0	5	0	3	0	0	4	6	2	26	52.00
SOUR CRM 8	4	0	2	0	6	8	4	0	0	0	8	4	36	36.00
DIP-F0	3	0	0	0	0	0	0	0	0	0	0	0	3	3.00
DIP-DB	0	0	0	0	2	0	0	0	0	0	0	0	2	2.00
WUP	0	0	0	0	0	0	0	0	4	0	0	0	4	4.00
S0 H&H PT	0	4	6	0	0	6	0	0	0	0	0	0	16	16.00
GIIRT H P	6	0	0	0	8	6	9	0	6	0	0	9	44	44.00
AL 2%	0	0	1	2	2	2	1	0	0	0	0	0	8	32.00
	TOTAL POINTS													1693.50

0 0109

AP135 W18 MAR 66

[illegible][illegible]

2018
Dec

A&P RECAPITULATION OF PHYSICAL DELIVERIES

AP135 W18 MAR.66

PER ROUTE BOOK 13.05

ITEM	10	11	12	13	14	15	17	18	19	20	21	22	TOT	PTS
						UNITS							804	1608.00
H GAL	60	60	60	60	72	84	60	60	60	60	84	84	352	352.00
QTS	24	24	24	24	48	48	24	24	24	24	24	40	96	384.00
PP GAL	6	6	6	6	12	12	6	6	6	6	12	12	15	15.00
CHOC QTS	2	1	1	2	2	2	2	0	0	0	1	2	16	32.00
BM H GAL	1	1	2	2	0	1	2	1	1	1	2	4	31	31.00
RM QTS	2	1	3	3	0	2	3	4	2	2	4	5	135	270.00
DM H GAL 2	10	12	14	10	16	18	10	3	8	8	12	14	73	146.00
GAL SKM	3	8	4	6	10	12	5	4	4	6	5	6	108	108.00
QTS SKM	8	4	10	14	4	16	10	0	8	8	12	14	69	69.00
H PT XXX	2	0	0	6	8	20	4	3	0	0	6	20	265	265.00
PT H&H	20	15	20	20	35	5	20	20	25	25	30	30		3280.00
TOTAL POINTS														

TOTAL POINTS		H&H		S&P	
1st	2nd	1st	2nd	1st	2nd
1	1	1	1	1	1
2	2	2	2	2	2
3	3	3	3	3	3
4	4	4	4	4	4
5	5	5	5	5	5
6	6	6	6	6	6
7	7	7	7	7	7
8	8	8	8	8	8
9	9	9	9	9	9
10	10	10	10	10	10
11	11	11	11	11	11
12	12	12	12	12	12
13	13	13	13	13	13
14	14	14	14	14	14
15	15	15	15	15	15
16	16	16	16	16	16
17	17	17	17	17	17
18	18	18	18	18	18
19	19	19	19	19	19
20	20	20	20	20	20
21	21	21	21	21	21
22	22	22	22	22	22
23	23	23	23	23	23
24	24	24	24	24	24
25	25	25	25	25	25
26	26	26	26	26	26
27	27	27	27	27	27
28	28	28	28	28	28
29	29	29	29	29	29
30	30	30	30	30	30
31	31	31	31	31	31
32	32	32	32	32	32
33	33	33	33	33	33
34	34	34	34	34	34
35	35	35	35	35	35
36	36	36	36	36	36
37	37	37	37	37	37
38	38	38	38	38	38
39	39	39	39	39	39
40	40	40	40	40	40
41	41	41	41	41	41
42	42	42	42	42	42
43	43	43	43	43	43
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18 Nov. 64
Place
Q112

PER ROUTE BOOK 18.05

ITEM	10	11	12	13	14	15	17	18	19	20	21	22	TOT.	PTS
	UNITS													
H GAL	60	60	60	60	72	84	60	60	60	60	84	84	804	1608.00
OTS	24	24	24	24	48	48	24	24	24	24	24	40	352	352.00
PP GAL	6	6	6	6	12	12	6	6	6	6	12	12	96	384.00
CHOC OTS	2	1	1	2	2	2	2	0	0	0	1	2	15	15.00
BM H GAL	1	1	2	2	0	1	2	1	1	1	2	2	16	32.00
HM OTS	2	1	3	3	0	2	3	4	2	2	4	5	31	31.00
BM H GAL 2	10	12	14	10	16	18	10	3	8	8	12	14	135	270.00
H GAL SKM	3	8	4	6	10	12	5	4	4	6	5	6	73	146.00
OTS SKM	8	4	10	14	4	16	10	0	8	8	12	14	108	108.00
H PT XXX	2	0	0	6	8	20	4	3	0	0	6	20	69	69.00
PT H&H	20	15	20	20	35	5	20	20	25	25	30	30	265	265.00
	TOTAL POINTS													3280.00

RECAPITULATION OF PHYSICAL DELIVERIES

AP135 W18 MAR 66

PER ROUTE BOOK 10-06

[illegible][illegible]

0134 A2P 940 LAKE STREET OAK PARK W18 MAR 66 PER ROUTE BOOK 18-23

[illegible]

Directions:

[illegible]

#134 A&P 940 LAKE STREET OAK PARK W18 MAR 66 PER ROUTE BOOK 18.22

ITEM	10	11	12	13	14	15	17	18	19	20	21	22	TOT	PTS
						UNITS								
H GAL	24	24	24	12	36	0	24	24	24	12	12	24	240	480.00
QTS	24	12	24	12	12	0	12	24	36	12	12	12	192	192.00
PP GAL	4	6	2	2	4	0	6	4	2	2	2	2	36	144.00
CHOC QTS	2	0	2	0	2	0	2	0	0	2	2	1	13	13.00
BM H GAL	3	0	2	1	2	0	2	0	0	0	2	3	15	30.00
BM QTS	2	0	0	1	2	0	3	0	1	0	3	1	13	13.00
RM H GAL 2	12	12	12	6	18	0	0	6	12	6	12	12	108	216.00
QTS SKM	6	0	0	8	6	0	8	4	4	6	6	6	54	54.00
H PT XXX	4	0	2	3	6	0	6	0	3	3	10	10	47	47.00
PT H&H	5	0	8	10	0	0	10	5	5	0	5	5	53	53.00
						TOTAL POINTS								
1/2 GAL SKM	6	0	0	8	6	0	6	0	0	0	6	6	38	1245.00 76.00

TOTAL POINTS 1318.00

[illegible]

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Atk. 10/10/11

A&P RECAPITULATION OF PHYSICAL DELIVERIES

022 W19 MAR 66

PER ROUTE BOOK 19.09

ITEM	10	11	12	13	14	15	17	18	19	20	21	22	TOT	PTS
	UNITS													
GAL GLASS	12	16	16	12	12	12	8	12	12	12	12	12	148	592.00
H GAL	48	60	48	60	60	60	48	60	72	60	60	48	684	1368.00
QTS	24	36	36	24	24	24	24	36	48	36	24	24	360	360.00
CHOC SKM H	2	0	6	2	0	0	0	0	6	14	0	0	30	60.00
CHOC QTS	4	0	0	4	0	0	4	0	0	4	0	0	16	16.00
BM H GAL	0	0	0	6	6	0	6	0	0	6	6	0	30	60.00
BM QTS	6	0	0	6	6	6	6	0	6	6	6	0	48	48.00
BM H GAL 2	0	6	6	12	6	6	6	6	6	12	0	0	66	132.00
(GAL SKM	12	0	6	12	0	0	0	12	6	12	0	0	60	120.00
Q'S SKM	6	0	0	12	12	0	0	0	8	6	12	12	68	68.00
H PT XXX	4	0	2	2	0	4	4	0	20	0	0	0	36	36.00
PT H&H	24	0	24	24	24	0	24	24	24	36	24	24	252	252.00
SOUR CRM 1	12	- 0	0	6	0	8	8	8	0	10	0	6	58	116.00
SOUR CRM 8	12	0	18	0	0	2	12	12	0	12	0	12	80	80.00
DIP-FØ	0	4	0	0	0	0	4	0	0	2	0	0	10	10.00
DIP-DB	0	2	0	0	0	0	0	0	0	0	0	0	2	2.00
WUP	0	0	0	0	0	0	4	2	0	2	0	0	8	8.00
SO H&H PT	8	8	10	10	18	30	0	0	0	0	8	8	100	100.00
YOGURT H P	4	0	0	6	0	4	0	0	0	0	0	0	14	14.00
GAL 2Z	4	4	4	4	4	8	4	4	4	4	8	8	60	240.00
TOTAL POINTS													3682.00	

Handwritten musical notation on a five-line staff, featuring various notes and rests.

A&P RECAPITULATION OF PHYSICAL DELIVERIES

A&P 522 W19 MAR 66

PER ROUTE BOOK 19.1

[illegible][illegible]

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

- - - - - X

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, :

Petitioner, :

-against- :

FEDERAL TRADE COMMISSION, :

Respondent. :

- - - - - X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

AFFIDAVIT OF
SERVICE

ALLEN CHIU, being duly sworn, deposes and says:

1. I am over the age of 18 years and not a party to
this action.

2. On the 23rd day of February, 1977, I served the
Supplemental Joint Appendix upon:

Baldwin Ogden, Esq.
Office of the General Counsel
Federal Trade Commission Building
Washington, D.C. 20580

by depositing true and correct copies thereof at the Post Office
maintained by the United States Postal Service at 73 Pine Street,
New York, N.Y. 10005, enclosed in a stamped, sealed envelope
addressed to said attorney.

Allen Chiu
Allen Chiu

Sworn to before me this
23rd day of February, 1977

Robert R. Cawthra, Jr.
Notary Public
ROBERT R. CAWTHRA, JR.
Notary Public, State of New York
No. 31-0605710
Qualified in New York County
Commission Expires March 30, 1977

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